Inovatívne formy vzdelávania v transformujúcom sa univerzitnom vzdelávaní

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SLOVAK ADMINISTRATIVE LAW

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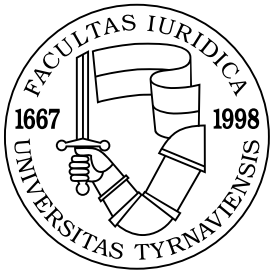

Slovak Administrative Law

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Content

Procedural rights of the party

Council of Europe attaches great importance to the issue of administrative legal relations. Recommendation of the Committee of Ministers CM / Rec (2007) 7 on good administration (the "Recommendation") dated 20 June 2007 reflects the efforts of Member States to define and enforce the fundamental rights framework for good governance in the Member States of the Council of Europe. The document builds on previous acts of public administration approved by the Committee of Ministers (the "Committee").

Public administration tends legal theory is defined as the management of public affairs in the public interest. However, many documents in connect the implementation of public administration with the emphasis on protecting public subjective rights of natural and legal persons. On one side is the performance of activities that protect the public interest, on the other hand, the same importance to the protection of the rights of recipients of government. Although the fragility of the relationship, according to the recommendations necessary to ensure the public administration quality legislation, which must be appropriate and consistent, clear and easily understandable, and accessible.

The intentions of these facts, it is necessary to interpret the causes and reasons which led the Council of Europe to adopt the recommendations. Systematic side of the issue, however, suggests that the right to good administration itself will incorporate a number of sub-delegated to authorized recipients's sphere of public administration. Concern of this paper is mainly a procedural part of the Recommendation and its Art. 13 governing applications by private individuals.

Subject matter of the Art. 13 of the Recommendation

The recommendations contains the code of good governance (the "Code"), which has the general terms to define the basis of the right to good administration. Code systematically expresses the principles of good governance, the procedural part and then remedies. The procedural guarantees include the right to demand the issueing of an individual administrative act. The content of this right includes the right to decide the time prescribed by law, the protection of the parties before the omission of the public administration and fight against it.

The text of Art. 13 of the Recommendation suggest that relate solely to the private party. Under domestic law, the legislature may not confer such rights as sole

physical and legal persons of private law. Several laws of the Member States recognize also other legal entities with partial legal personality. You do not have the legal personality to the extent that it is for legal persons. If applicable law grants the entity be a party to the proceedings, the protection will be in accordance with Art. 13 recommendations also apply to these entities. Another group of subjects, in our opinion, constitute autonomous territorial units. Act as a legal entity, not only in public but also private law. Nor is it impossible that such entity is a party administrative proceeding.

Right to demand the individual administrative act

Application of the law to demand the individual administrative act by an individual will be eligible only legally stipulated procedures. Applications must be trained to understand any expression of will, made in the form prescribed by law, capable of producing proceedings before an administrative authority. This procedural step is so essential for the protection of the application in accordance with Art. 13 recommendations.

Moment of receipt of expression of will, a body created procedural rights and obligations. Request it compulsory executor government take decisive action within a reasonable time to examine the assumptions and conditions and procedures. Given that view of the matter does not act unilaterally, we deliver the right to demand the individual administrative act may, in our opinion, be applied in proceedings instituted at the initiative of the authorities. This is logical, because in such cases, a private person to seek an administrative act within a reasonable time and under conditions stipulated by law.

The law is also declared in the decisions of the European Court of Human Rights (the "ECHR") Akdivar et al. in. Turkey.

Since r. 1985 arose between the armed security forces of Turkey and the Kurdistan Workers Party disputes. Their effect was to burn houses of complainants.

Commission on Human Rights (the "Commission") has recognized the applicants claim that by Turkey no measures were taken to determine the status and the resulting investigation of the facts. Public authorities have not provided guidance on the victim, which would have to seek compensation for the damages. Although the mayor of the dmaged village file more petitions to the Turkish government, none of them did not deal with them. Activities of the Turkish authorities, the complainants waited until after his application to Strasbourg. Inaction of the Turkish public authorities towards complainants was demonstrated.

Filing a petition to the Turkish authorities can be seen as an application of individuals in accordance with Art. 13 recommendations and combine them with the right to issue an individual administrative act. In this regard, there has been, in our opinion, the absolute inactivity of which could not be justified by exceptional domestic situation. Interest in the continuity of government persists during the state of emergency. It is for the legislature to provide for effective tools to deal with such sit-

uations, and the role of government to apply these tools effectively. For this reason, the applicants' right to a decision by the competent authority has been violated.[1]

Inaction of public authority within the decision making activity on the request of a private persons

The right to seek issue individual administrative act is further specified in Art. 13. (2) recommendations.[2]

In the case of Broniowski v. Polland[3] the complainant on 15 September 1992 demanded the decision before the District Office in Krakow (Urząd Rejonowy). Objected to the amount of compensation for the land they left the complainant's grandmother in r. 1947 in Lviv, Ukraine to this day, even before Polish territory. The value of the compensation provided by the complainant's property was substantially lower than the value of the original property. On 16 June complainant informed the District Office, Department of Planning of the registration request, adding that at the time could not be the applicant's request. However, the complainant's request was registered. Response Office was to be considered only for written information about the status of the proceedings.

On 14 June 1994 the complainant informed the Regional Office (Urząd Wojewódzki), the Treasury at that time did not have any assets earmarked for this purpose and therefore satisfy the complainant in this regard could not be again.

On 12 August, the complainant turned to the Supreme Administrative Court (Naczelny Sąd Administracyjny). He alleged inaction and failure of the administration in matters of law requests displaced citizens. The court also dismissed its application on the grounds that the inactivity occurred because the applicant was informed by the administrative authorities.

In our opinion there but by the court was an error of law subject to the procedural confusion institutes - the decisions and information about the status of the proceedings. Although in this case is not of legal-theoretical point of view to speak of absolute inactivity administrations complainant's position remained uncertain because nedomohol the decision. This can be argued that the procedure was a public authority infringed rights of the complainant to issue an individual administrative act.

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1 Similar facts sa declares in the decision *MENTEŞ a spol. v. Turecko* (http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/e4ca7ef017f8c045c1256849004787f5/0dac0e27e7502dabc125665800283ce2?OpenDocument, 10.04.2010, 09:12). After aj právnej skutkovej Rozhodnutie na stránke priamo refers to rozsudok vo veci Akdivar and company. v Turkey.

2 Made decisions that reagujú to the beginning of podanú orgánom, prijímajú sa management verejnej in primeranej time, it can even lehote defined zákonom. Predvídať, sa mali corrective opatrenia pre pickings, keď rozhodnutie prijaté would also not.

3 http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/1d4d0dd240bfee7ec12568490035df05/b9159ec7b98e456cc1257088002e1bdc?OpenDocument (10.04.2010, 14:52 hod.)

The right in question, of course, does not constitute a public authority to comply with any request made private person. However, the executor makes the duty of government to decide on the request. In case of a negative decision, the applicant's right to claim the issue an individual administrative act is not violated.

A similar conclusion had been reached by the ECHR, it held that the part of the state, there was no effective administrative measures to protect the property rights of the complainant.

The assistance of the administrative authorities to decide on the applications of individuals

The assistance of the administrative bodies is closely related to relevancy as a condition for completion of the proceedings. Given the diversity of the processes taking place in public administration and a number of matters falling within the scope of government, it is important to examine the substantive jurisdiction of the administration. Make a substantive ruling by an authority based procedural irregularity and the reason for the annulment.

In accordance with Art. 13. 3 recommendations if the request is submitted by the authority to which the relevant competence is lacking, it will send the recipient - if possible - to the competent authority and the applicant shall be informed. The provision thus implicitly imply that the administration examine the jurisdiction to hear the case.

The committee chose to create the code phrase 'it will send the recipient - if possible - to the competent authority ... ". The present wording of that after finding the body of his lack of competence required to identify the competent administrative authority. If that under current legislation, it is not possible, it is required to send the request to another authority. About that event, however, in our opinion, should inform the submitter of the request. The recommendation, however, explicitly states only the obligation of the public authority to inform the applicant of the transfer request. Information about the inability to transmit the request to the proper issuing authority should give rejection decision to the party. The need for this approach was confirmed by the decision in the case in Gustafsson v. Sweden.

The provision of Art. 13 contains recommendations obligation of the administration to accept requests of individuals with an indication of the time of adoption of individual administrative act.[4] This requirement primarily sets the deadline for a decision by national legislation.

The question arises to what extent is the administrative authority shall notify the applicant, information on time, if this is provided for in the Act? Interpretation of the

[4] Under that provision, all requests for individual decision „referrals sent to public authorities will be accepted with an indication of the anticipated time when the decision will be issued with the indication of possible legal remedies and, if there is no decision taken. Written notice may be omitted where the public authorities are responding by decision quickly. „

recommendations in this respect was very formal, if the legislature has no such obligation performer government imposed. Another has been the situation if national legislation allows for the reasons specified by law the administration extended the deadline for a decision. In this case, it is essential that the administration not only informed her about this procedural step, but also the reasons for a length of time to be decided.

Means to protect the right to obtain a decision in the Slovak legislature

Previous requirements of its legislative recommendations found expression in constitutional and statutory regulation. According to Art. 46. 2 of the Constitution of the Slovak Republic - the Constitutional Act no. 460/1992 Coll. (Hereinafter referred to as "the Constitution") - who claims he was deprived of his rights by a public authority, may appeal to the court to examine the legality of the decision, unless the law provides otherwise. The jurisdiction of the court shall not be precluded review of decisions relating to fundamental rights and freedoms. The content of the provision is implicitly expressed as the right person to issue an individual administrative act executor of government.

The finding of the Constitutional Court of the Slovak Republic no. IV. U.S. 156/03 of 29 January 2004 confirmed so. According to this decision favoring formalistic assessment provided admissibility objector omissions of the public authority of the ordinary courts against materialistic understanding of the fundamental right to judicial protection constitutes a violation of the fundamental right to judicial protection under Art. 46. 1 of the Constitution and the right to a fair trial under Art. 6. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

According to the decision of the Supreme Court of the Slovak Republic sp. no. 5 Sžnč 5/2005 subject to proceedings under Title IV of Part Five of the Code of Civil Procedure (idle action against a public authority) is exploring and assessing whether a claimant suffers a public authority for their rights and interests protected by law, but the alleged unreasonable inertia of the body. The court should therefore not be seen on state rights and obligations of the concerned administrative proceedings, but an authoritative work on the elimination of idle public authority. The only way to ensure purposeful protect the legal right to demand the individual administrative act.

The Art. 48. 2 of the Constitution enshrines the right to a hearing without undue delay before a court, other state bodies and public administration. The purpose of this constitutional right is to act without delay and eliminate the state of legal uncertainty faced by the person requesting the public authority has ruled. Doing enough to state authority in the matter of the participant performed certain acts, but the purpose of this law is to be achieved by issuing a final decision.[5]

[5] Order of the Supreme Court of SR, no. 5 Sžč 5/2005, ASPI 15/2008 ZSP.

Legal right of expression can be found in Act no. 71/1967 Coll. on Administrative Proceedings (Administrative Code), as amended. Administrative Code creates a general legislation on the decisions on the rights, legally protected interests and responsibilities of individuals in public administration (Art. 1 paragraph 1 of the Administrative Code).

Basic means of the protection of individuals' rights express the provisions of the Administrative Code on the decision (Art. 46 et seq.). The administrative Code includes also the right of the party to request the administrative authorities to decide within the statutory period (§ 27 and § 28). Along with the provision of § 50 of the Administrative Code are the primary regulation that reflects the requirement recommendations t. j. the right to demand extradition of an individual administrative act to protect the parties and stabilize their legal status in the absence of activity of the administration, which is in conflict with the law.

Perhaps the best known in this direction in Slovakia is the Act no. 211/200 Coll. on free access to information and amending certain laws (Freedom of Information Act), as amended (the "Act no. 211/2000 Coll.). This generally binding regulation establishes requirements for the constitutional right of access to information that is both a means kontroly government and to ensure its effectiveness.

Institute of fictitious decision protects the individuals against the inaction of the administration and against the breach of the right to request a decision. Existing legislation contained within the Act no. 211/2000 Coll. expresses the fiction of the negative individual administrative acts if the administrative authority is passive.[6] If the authority fails to act within the statutory period and shall not issue or decision, a person has the right to defend itself against such refusal with the appeal, but also to submit an action to the court, if fails within the appeal.

The essence of this legal institute very eloquently presented as the Bratislava Regional Court in its decision no. to. 19 S 31/02 of 16 May 2002. According to the preamble for citation purpose of introducing the Judgment Institute fictitious decision was not "legalize" inaction obligors for deciding on applications under this Act, but to provide protection to those who have turned to an obliged person to request the disclosure of information.

In terms of enforcement of the requirements of recommendations can institute treatment decisions fictitious assessed positively. A party is a guaranteed issue is the decision of the contents of which he is famous (in the case of failure to carry out the statutory duties of the administration). The decision is a participant shall ipso jure. The nature of the recommendations and the universal nature of the obligation on Member States of the Council of Europe is mainly political. However, the intention of the creators emphasizes efforts to establish clear rules of public administration. Reflecting the political to the legal requirements in the plane of the context key. Therefore, in our opinion, must take into account not only the content of the recom-

[6] Pursuant to section 17 (2). 3 the Act No. 211/2000 Coll. If required to a person within the time limit for the equipment request did not provide information or has not issued a decision, nor failed to disclose information, it is assumed that issued a decision which refused to provide information. For the day of delivery of the decision in this case is considered to be the third day from the date stated for the equipment request.

mendations in the creation of new laws and regulations, but especially in the implementation of existing good standards.

Detection of the grounds for the decision

The role of government is primarily to protect the public interest. Management of public affairs therefore protects the values expressed in the correct standards. Object Management Standards as a specific value has its legal significance accorded legislation. These considerations, however, there were too restrictive if the protective function of good standards associated only with the public interest. Identical importance must be attributed to the protection of public subjective rights and enforcement of statutory obligations. Such a thesis supports the dynamic view of public administration and the interest on its proper functioning, as provided for in the applicable legal standards. Laws of modern European states therefore excluded socially undesirable behaviors, and these affect the level of criminal and administrative law, and criminal law enforcement agent should be considered as a last resort. The issue of the proper punishment is justified to protect the public interest, public safety and public order, the rights and freedoms of individuals. However, it is characterized by a significant interference with the constitutionally guaranteed rights and freedoms of the person punished. The interest of this paper is directed at the stage of gathering documents for a decision on the offense, thus inferring process predpodklady administrative liability.

The national interest in protecting the public interest, public subjective rights and duties is often influenced by the will of the international community. Undeniable importance in the field of activity presents the bodies of the Council of Europe. This builds its activities internationally accepted principles of construction and operation of public administration. The Council of Europe expresses its activities thorugh its willingness to tackle the issue of administrative relations. It builds internationally accepted principles of construction and operation of public administration. This approach influences also the administrative proceedings. Recommendations of the Committee of Ministers as the sources of international law are known as a soft law. Are not binding and there is no violation of international legal responsibility of an entity so as not respecting the rules formulated not to be construed as unlawful conduct. Despite this fact, the Member States of the Council of Europe seek to incorporate the principles and policies adopted in the recommendations in their legal systems. Recommendations to the Council of Europe are also under Slovak law its unquestionable importance.[7] The importance of the type of document recom-

[7] Košičiarová, S., Priestupky a odporúčanie Výboru ministrov Rady Európy č. R (91) 1 o správnych sankciách, Notitiae ex Academia Bratislavensi Iurisorudentiae, Bratislava: Bratislavská vysoká škola práva, november 2009, s. 32

mendation is due to their non-binding character only secondary. However, the very activity developed Member States expressed desire to improve individual national regulations and to guarantee basic human rights and freedom in every area of legal life. This objective represents also the Recommendation of the Committee of Ministers of the Council of Europe (91) 1 on administrative sanctions (the "Recommendation"), thereby influencing the perception of administrative offenses and taking up administrative responsibility for violation of administrative rules. At the same time it enshrins the minimum standard of rights and obligations of the subjects of the administrative punishment.

Recommendations in the context of the Council of Europe

The Council of Europe aims to unify the rules of public administration by the Member States. Recommendatory character created documents emphasizes the protection of individuals with regard to the administrative legal decisions.

Even in this context recommendation follows the resolution of the Committee of Ministers of the Council of Europe. (77) 31 on the protection of individuals with regard to the decisions of public authorities (the "Resolution"). The rights of persons mentioned in Resolution shall be applied in such processes, which involve the issuance of a decision (indivuálnych správnych acts) executors of government (the exercise of public authority) in relation to natural and legal persons who are directly affected by those decisions.[8]

- Principles introduced by Resolution to protect such persons in the administrative process with respect to the actions or decisions in such proceedings. Pursuant to the resolutions of individual administrative acts, which are also likely to obstruct the rights, freedoms or legitimate interests of a party. The wording chosen is justified mainly because of the legal effect of administrative decision and its binding nature, which is reflected in the change of the legal status of the participant. Resolution guarantees the parties the following rights:
  - The right to be heard,
  - The right of access to information,
  - The right to indicate reasons for the decision,
  - The right to information about legal remedies.

The principles enshrined recommendation have their real meaning only in connection with the guarantee of procedural rights mentioned party. Special procedural principles expressed in the recommendations reflect the procedural rights of persons accused of an administrative offense, as follows:

[8] Košičiarová, S., Transpozícia požiadaviek rezolúcie Výboru ministrov Rady Európy č. (77) 31 a právo na dobrú verejnú správu, Acta Universitatis Tyrnaviensis – Iuridica, Trnava :Právnická fakulta Trnavskej univerzity v Trnave, 2009, s. 80

- The right to be informed of the reasons for which the action takes place on the administrative offense;
- The right to it was given dostočný time to prepare a defense (the adequacy of time depends on the complexity of the case and the amount of impending sanctions);
- The right to express themselves on any matter, which should be in action on offense right decision;
- The right to have the decision was well reasoned.[9]

These criteria form the procedural rights of a fair administrative process under Art. 6 of the Recommendation. Relationship resolutions and recommendations can be characterized as a special relationship. The recommendation builds on it contextually. However, specializes exclusively in the area of administrative punishment. In particular, a correlation activity Strasbourg case-law institutions may be mentioned the importance of the recommendations of the Committee of Ministers to Member States CM / Rec (2007) 7 on good governance. In particular the right to demand the issuance of an individual administrative act under Art. 13 of this document is important in aspects of administrative punishment. It stresses the need for the imposition of administrative sanctions only through administrative decisions in a timely manner.

The aforementioned documents indicate the importance of the decision (individual administrative act) as a result of decision-making activities of the administration. However, the impact of established principles affects also the transparency of the procedure, which prevents those decisions. Violation of established procedural rules may constitute a ground for annulment of the decision in its review.

The grounds for the decision on offense

The administrative procedure is carried out at each stage. Each of these parts is own particular set of procedural steps. Acts, which provide evidence of individual administrative act is largely concentrated in the survey phase documents for decision.

Offences create subcategories administrative offenses are dealt with in proceedings for offenses under the Act No. 372/1990 Coll. on administrative offenses, as amended (the "Act offenses"). This rule does not contain a comprehensive treatment of all institutes procedural, procedural includes only those institutes that are carrying out the procedure for misdemeanors.[10] Because of the relationship subsidiarity the Act no. 71/1967 Coll. on Administrative Proceedings (Administrative Code), as amended, enacted in § 51 of the Offences infringement procedure can be applied to procedural institutes, as they know the administrative proceedings. General reg-

[9] Košičiarová, S., Priestupky a odporúčanie Výboru ministrov Rady Európy č. R (91) 1 o správnych sankciách, Notitiae ex Academia Bratislavensi Iurisorudentiae, Bratislava : Bratislavská vysoká škola práva, november 2009, s. 35

[10] Ševčík, M. a kol., Správne právo procesné – Jednotlivé druhy rozhodovania, Eurounion, Bratislava: 2009. s. 107

ulation for detection of the grounds for decision is placed in the Art. 32. 2 of the Administrative Code.[11] The calculation process tools are merely illustrative, and for this reason, that the definition of the grounds on which it is explicitly specified in the provision. § 32. 3 of this Act.[12] The basis of the decision is, in our opinion, all the facts of legal significance, capable of clarifying the case and lawful manner.

The specifics of the infringement procedure is to distinguish the two forms of the survey documents for the decision, and that a pre-trial process. Offences Act distinguishes preprocedural stage of the proceedings – socalled the clarifying offenses. This is the stage at which procure materials required for the initiation of proceedings and issue decisions on offense. Clarifying the offense conduct is not an offense proceeding, not a misdemeanor authorities clarifying the position of the administration and to clarify offenses can alternatively apply the correct order, because it applies only to the right, thus the infringement procedure.[13]

Clarifying the nature of pre-trial would justify its inclusion in the provisions of the Act prior to the opening. The current treatment is a clarification of offenses classified as provisions prievehu proceedings. The legislature these provisions incorporated into the process of the infringement procedure.

Clarifying the offense is performing the acts and documents prior to the acquisition of an infringement procedure, which is necessary for the decision of an administrative body, in particular the implementation of evidence of the crime.[14]

Offences Act recognizes the Institute došetrovania offenses under § 69, and a hearing in accordance with § 74 Both institutes are closely related to the principle of material truth, and thus to ascertain the grounds on. Due to their inclusion in the process of the Minor Offences Act will not be subject to the alternative, the Administrative Code. Although the Administrative Code may alternatively apply only to a procedural form, both forms may be carried out in accordance with the recommendations.

Selected principles of Recommendation

Recommendation distinguishes eight principles of good punishment. Punishment as a means of sanctioning illegal behavior is a manifestation of the administrative relationship in substantive terms. It is a result of the unlawful conduct of an offender. The process dimension is a form of the decision imposing the sentence. For

[11] The background to the decision are, in particular, of the suggestions and comments of the parties, the evidence, statements, as well as Honorary fact generally known or recognized administrative authority of his official activities.

[12] The legislature here indirectly hinted that form the basis of a decision can also be facts which are important for the proceedings and decisions.

[13] Potásch, P. a kol., Vybrané správne procesy (teoretické a praktické aspekty), Eurokódex, Bratislavská vysoká škola práva, Bratislava : 2010, s. 187

[14] Ševčík, M. a kol., Správne právo procesné – Jednotlivé druhy rozhodovania, Eurounion, Bratislava : 2009. s.111

consider the following key rules set recommendation. This is particularly the principle of legality, the principle of the right to a fair trial and the principle - the requirement of proof lies with the administrative authority.

Legality

In the early part of the document is included in the principle of legality. This is the underlying rationale, it affects all other rules. Compliance with the law process activity determines the implementation of all procedural steps, starting with the opening of up to a decision.

The importance of the principle of legality stems primarily from Art. 1 of the Constitution of the Slovak Republic (hereinafter referred to as "the Constitution"), pursuant to which the Slovak Republic is a sovereign, democratic and rule of law. It is not bound by any ideology or religion. Slovak Republic recognizes and respects the general rules of international law, international treaties, which are binding and its other international obligations. According to Art. 2. 2 institutes, public authorities may act only on the basis of the Constitution, within its limits, and to the extent and in the manner provided by law. The the Art. 13 which establishes the rules and to adjust the limits of fundamental rights and freedoms.[15] Recommendations thus emphasize the importance of the Constitution, in particular to guarantee the protection of individual rights and freedoms. It also points to the documents governing the exercise of powers of the executors of government. It requires clarity of formulation of sanctions and ceiling. Legality has the right to control the proceedings as a whole, and provide guarantees for the review of decisions.

Under the Art. 58. 1 the clarification of offenses under the Act shall mean in particular the procurement documents for the administrative decision on whether

a) has become the act underlying offense under this or any other law,
b) the act committed by a person suspected of having committed an offense,
c) shall be penalized for an offense, or of its deposit waived if the offender is sufficient to correct itself discuss the offense
d) impose a safeguard measure,
e) require the offender to reimburse the offense caused damage.

Phase of the survey documents for decision is thus under Art. 58. 1 explicitly included in the pre-trial stage of the proceedings, even if it can not be any doubt that the Administration is authorized to establish the basis for a decision in the very stages of the procedure.

Due to the non-exhaustive list of acts which are to be secured by a decision, the question arises to what extent the administration to clarify the offense limited in

[15] Košičiarová, S., Priestupky a odporúčanie Výboru ministrov Rady Európy č. R (91) 1 o správnych sankciách, Notitiae ex Academia Bratislavensi Iurisorudentiae, Bratislava: Bratislavská vysoká škola práva, november 2009, s. 33

their activities due to the current wording of Art. 2. 2 of the Constitution. Of course provision. § 60 paragraph. 1 provides circuit acts to which institutions are authorized to clarify offense legitimized.[16] Although the statutory provisions of the formulation of the Art. 60 paragraph. 1 misdemeanor law at first glance, it appears that contains a closed number of procedural steps, in our opinion, it can be argued that, given the nature of the referral provisions of its actual contents will vary depending on changes in specific legislation. The selected set of actions, as worded by far in our opinion does not reflect the needs of the procurement documents for a decision on the offense. A present interpretation of the provision suggests the Art. 69 expressing the supplementary investigation of the offenses enshrining the opportunity to ask clarifying body misdemeanor to perform the necessary operations to discuss the offense. Acts necessary for further investigation of the offense are already underway for initiation, although this is interrupted by law. In this direction already taken steps can alternatively apply the correct procedure.

Clarifying the offense is anchored set of tools for the executor of government in order to determine the grounds on. The wording chosen by the legislature in the law on misdemeanors acts but vague and unclear. Striking part of the actions of clarifying the offenses will take place under special regulations. Only the interpretation of the provision Art. 58. 2 and 3 can determine the expected range of laws under which it will be possible to establish the basis of the decision of the offense. This provision establishes the scope of the executors of government in the process of detecting offenses. In conjunction with the Art. 58. 1 will be possible to determine the range of legal instruments in which the proceedings. Procedural steps for the survey documents the decision will therefore vary from procedure to procedure, and will depend on clarifying the nature of things. Legality will therefore involve performing acts detection of offenses under the Act and under other regulations. For example, a member of the municipal police will be able to do just as a general rule for offenses under the Act no. 564/1991 Coll. the municipal police.

On the one hand, as can be judged positive in the criteria for membership of the administrative bodies and clarifying offenses in explaining this concept legislature. Conversely shortcomings in respect of legality can be seen in treatment of actions is too vague survey documents for the decision. Another aspect is the inability to relate to the alternative provisions for detecting violations of the provisions of the Administrative Code identifying documents for the decision, as is clarification stages of the offenses. The offender is within its detection in any procedural status. This is awarded to him after initiation, when it becomes charged with an offense. Examination of compliance with the terms of legality clarification appears to be a complex process. Given the nature of decision-making activities, to clarify which offenses can

[16] Act on Offences here exhaustive pleadings mentioned survey documents the decision. Authorities empowered to clarify offenses are eligible for detecting violations
a) require an explanation from natural or legal persons,
b) require an explanation from the state authorities and municipalities
c) require the expert opinion from the competent authorities
d) carry out or require actions potrerbné to identify persons and their residence
e) require the submission of the necessary documents, in particular, files and other written materials.

result, we can state compliance with the principle of legality as recommended. Nevertheless there is not a complexity within the legislation on survey documents for a decision before proceeding and only implicit expressions announce only character provisions clarifying offenses.

The right to a fair trial

The basis of the right to a fair trial is the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"). According to Art. Paragraph 6. 1, first sentence of the document, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, the determination of his civil rights and obligations or of any criminal charge against him.

The Convention explicitly applies to court proceedings. Numbers of procedures are carried out in the public administration. Article 6. 1 of the Convention, thanks to the rich jurisprudence of the European Court of Human Rights also undirectly applies to administrative proceedings and to the procedure of decision issuance, that influence the legal status of the adresse of public administration.

Another argument is the relationship of offenses and crimes in the Slovak legislation, which still remained contained material page assessment of the act in order to distinguish offenses from misdemeanors. Extensive interpretation of Article. 6. 1 of the Convention may thus serve finish scope administrative order under sec. § 1 of this Act, and treatment provision Art. 10 of Act no. 300/2005 Coll Penal Code.

Board terms in Art. 6. 1 of the Convention, however, remain independent of national law and is formed mainly Strasbourg institutions. While legal offenses to affect us in the mode of criminal procedure, which is codified in the Code of Criminal Procedure, the proceedings on administrative offenses is uniformly codified rules. Offences under the Offences Act represent a partial codification of procedural legislation as for the administrative liability.[17] The right to a fair trial (fair administrative procedure) is to structure the recommendations included in Art. 6. The rule in itself authorization process incorporates four people accused of administrative offense.

The problem of the application of these provisions, however, lies in their relation to the grounds on which survey. Since the acquisition of documents can be done well in advance of the the extent possible application of these rules on the infringement procedure? The right to a fair trial is primarily made up of procedural rights of persons to be informed of the reasons for which the action takes place on administrative offenses. While clarifying the offense has the standing of a person accused of an offense. On the other hand, may have to provide an explanation clarifying the authority offense under sec. § 60 of the Offences.

[17] Machajová, J. a kol., Všeobecné správne právo, 4. Vydanie, Bratislava: Eurokódex, s. r. o., 2009, s. 195

Application of the Art. 6. One stage of pre-trial detection of infringements of its nature does not, because of the suspect's entitlement to refuse to provide an explanation under sec. Paragraph 56. Second It provides that 'everyone is obliged to clarify the authority of the legitimate offenses explanations necessary to verify the entries of the offense notification, an explanation is entitled to deny, if a person close to him or caused nebezpečentsvo prosecution. " However, the question arises why should the person administering the explanation on the statement of offense shall be protected only at the level of the criminal law? Requirements recommendations (and therefore the right to a fair trial) often go deep into the issue and take account of both the formal and the material side of things. What if the person administering the explanation itself could cause a danger or a person close to punishment for an offense? To 31 January 2009 contained the following wording Infraction Act provision. § 56. 2: "Everyone must submit proper authorities and to clarify the legitimate offenses explanations necessary to verify the entries of the offense notification, an explanation shall be entitled to withhold if their loved ones or those in danger of prosecution for an offense, or an offense or a breach by the State or professional secrecy by law or expressly imposed or recognized duty of confidentiality. " The amendment to the Act on Offences effective from 1 February 2009, this version replaced the above provisions. The obligation under Art. 56. 2 covers any. Its failure to constitute an offense under Art. 21. 1 point b) and f).[18] Although due to the nature of pre-trial application there is no application of the Article Six to the clarification of the offenses. The wording of this provision remains questionable. The provisions of Art. 56 is monitored intention fullest and most reliable to establish the circumstances applicable to discuss violations and to ensure effective enforcement of offenses.[19]

The situation has during the course of the proceedings. Application of Art. 6 recommendations are beyond reproach. In a narrow sense, the right of the accused of the offense to be familiar with the reasons for which the action takes place on offense shall combine with the method of treatment initiation. In a broader sense, is associated with the procedural law of the accused of the offense to be duly summoned to a hearing, to be heard before a decision on its base, as well as the right to know the reasons for the decision.[20]

Under the Art. 18 par. 2 the 2nd sentence of the Administrative Code, The proceedings is initiated on the day when the submission of party has come to the administrative authority competent to issue the decision. If the procedure is initiated on the initiative of the administrative authority, is the proceedings initiated on the day when the authority has made the first act to the party. § 67 of the Act on Offences and report on the result of detection of offenses. Report on the result of clarifying will therefore reflect adequately justified belief that the act, which became the of-

[18] Machajová J. a kol., Základy priestupkového práva – komentár k zákonu o priestupkoch a súvisiace právne predpisy, Šamorín : Heuréka, 1998, s. 140

[19] Machajová J. a kol., Základy priestupkového práva – komentár k zákonu o priestupkoch a súvisiace právne predpisy, Šamorín : Heuréka, 1998, s. 141

[20] Košičiarová, S., Priestupky a odporúčanie Výboru ministrov Rady Európy č. R (91) 1 o správnych sankciách, Notitiae ex Academia Bratislavensi Iurisorudentiae, Bratislava : Bratislavská vysoká škola práva, november 2009, s. 42

fense, and that he committed a person. Also, under the abovementioned principles will therefore base this strictly subject to the conditions of legality. The acquisition of the grounds on which the offense occurs during the procedure, according to our opinion, especially in institutes došetrovania offenses and hearing. The group of the requirements of process within the administrative punishment is created not only by the national laws but also the Convention for the Protection of Human Rights and Fundamental Freedoms. Concerned authorities and institutions in this regard examine the quality of the process, which means the right to just, fair trial, conducted publicly and within a reasonable time, respecting the presumption of innocence and set minimum rights of the accused.[21]

On hearing under sec. § 74 of the offenses the accused has the opportunity to actively exercise their procedural rights, which involves the right of an accused of an offense to express things, which is to take place, thus the basis for a decision on the offense. According to the decision of the Supreme Administrative Court of 20 First 2006, sp. no. 4 and 2/2005 no. 847 Sb. NSS is an administrative authority to decide which evidence in proceedings for the offense to execute, it may not restrict the right of the right of persons facing charges of a criminal nature in a broader sense, to examine or have examined witnesses against him and to obtain the attendance attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.[22] This sentence demonstrates the importance of legal documentation acquisition decisions after initiation. Witness testimony as evidence is also the basis for a decision. The decision highlights the importance of equality of arms in the active defense of the accused of an offense. It also illustrates the relationship of process oprávnenia administration take evidence on the one hand and the right of a person accused of an offense to a fair trial on the other. The Article 6. 2 recommends that the accused should have a sufficient portion to prepare a defense, and not just depending on the nature of the case, but also in dependence of sanctions that may be imposed on him.

Defense accused of misconduct on the acquisition of the grounds on which it is bounded by the end of the process activities. The accused has the opportunity to defend against the identified substrate after their meeting, through their right to be heard. In accordance with recommendations of a person accused of an offense shall have the opportunity to be heard before a decision is taken. This process also has the right to ensure equality of arms in admnistratívnom process and to guarantee the right to a fair process. The content of this right also guarantees the Art. 73 paragraph 2. Charged with an offense has the right to comment on all the facts which he blamed for if evidence of them, apply the evidence and his defense, he can also make proposals and apply the remedies.

The present formulation corresponds to the general procedural rules adopted in the correct order. Under the Art. 33 par. 1 of the Administrative Code the person concerned has the right to propose and complete evidence and witnesses and experts

[21] Machajová, J. a kol., Všeobecné správne právo, 4. Vydanie, Bratislava : Eurokódex, s. r. o., 2009. s. 195

[22] Šiškeová, S. – Lavický, P. – Podhrazký, M.: Přehled judikatury ve věcech správního trestání. ASPI, a.s., Praha 2006, s. 605

to ask questions at a hearing. Under the Art. 33 par. 2 A The administrative authority shall give the parties and involved persons the opportunity to comment the decision on its ground also on its origin or to propose the amendment of the ground of the decision before its issuance.

The right to comment on the basis for the decision (to be heard), expresses the decision of the Supreme Administrative Court of the Czech republic, decision of November 14th 2003, no. 7 A 112/2002. The purpose of the Art. 33 par. 2 of the Administrative Code is to allow the parties to phase "before judgment" ie, after the administration ended collection documents the decision the party has a right to apply proposals and the objections. Such a process to make suggestions guarantees that the decision is based on the real state of matter reliably detected. A party can not make himself legally relevant judgments about when it is gathering documents for Decision completed, the challenges of administration must be clear that the grounds on which the collection has been completed.[23]

Compliance with procedural obligations and the application of procedural rights is justified in relation to a decision which must include statutory requirements.

The right to a fair administrative process involves a violation of the right of the accused to properly justify a decision imposing a sanction. Offences Act governs only award decision. Under the Administrative Code of subsidiarity is the decision of the offense provision may apply. The Art. 47 par. 2 of the Administrative Code, according to which a reasoned decision of the administrative authority shall state that the facts were the basis for the decisions such considerations in the evaluation of the evidence, the right to use discretion in the use of law under which to decide, and how to cope with the proposals and objections parties as the basis for a decision on the statements. Justification decision thus reflects the whole course of the proceedings, including the grounds on which the collection. Statement of reasons is to be convincing enough to lead parties on a favorable attitude to the statement of the accused and to voluntary compliance. The purpose of the requirements is based mainly on the possibility of a subsequent review of the decision. The fully reasoned decision can be regarded as one that meets the legal requirements for its content. Judicial case law has previously expressed that not all the fault of administration on the content on the decision of the administrative legal sanctions cause nepreskúmateľnosť.[24] A serious error is, in our opinion, for example, if the administrative authority in support of the statement of decision on the facts, which contradict each other. So if in the explanatory memorandum introducing administrative authority shall take one thing at baseline and the end justifies the statement skutošnosťou opposite. Requirements for reasons expressed in Section. Art. 47 par. 2 of the Administrative Code. expresses the requirements to the procedure preceding the decision. This perception corresponds to the provisions of the Administrative Department also

[23] Šiškeová, S. – Lavický, P. – Podhrazký, M.: Přehled judikatury ve věcech správního trestání. ASPI, a.s., Praha 2006, s. 654 - 655

[24] Košičiarová, S., Priestupky a odporúčanie Výboru ministrov Rady Európy č. R (91) 1 o správnych sankciách, Notitiae ex Academia Bratislavensi Iurisorudentiae, Bratislava : Bratislavská vysoká škola práva, november 2009, s. 45

has over the course of the proceedings, which is to stick to the rules even when obsatrávaní documents for decision.

Principle - the onus of proof lies on the administrative autority

The process of detecting the evidence is included in Art. 7 of the recommendation. The burden of proof should lie on the administrative authority. The general rule of procedure is recommended by the administrative authority to bind. Initiated the proceeding should be terminated to a decision that is based on supporting evidence.

The rule is an expression of the principle of presumption of innocence embodied in the Convention. In accordance with the Art. 6. 2 of the Convention, anyone charged with a criminal offense shall be presumed innocent until proved guilty according to law. The presumption of innocence reflects the need for the guilt of the accused has been fully and clearly demonstrated, the accused is not required to prove not only no evidence testifying against him, but not in his favor (it is not required to prove his innocence). If there are, after all evidence of reasonable doubt on the question of guilt, it is necessary to decide in his favor.[25]

The procedural obligation to prove the commission of the offense charged to the administrative authority. In case of Art. 6. 2 of the Convention as the case may be mentioned Minelli v. Switzerland of 25 March 1983.[26] This decision concerns judicial Although offenses: "In the judgment of the court presumption of innocence will be violated if, without prejudice to the accused proven guilty according to law and in particular without the possibility of exercising the right of defense, the Court's judgment in the case of the accused reflects the opinion that he is guilty. It can be even in the absence of any formal finding, it is sufficient that there is some reasoning suggesting that the court takes into account the accused's guilt. "

The Offences Act implicitly expresses the requirement to prove to the conditions under the Art 58. 1 expressing the clarification governing offenses. This means that for the purposes of the proceedings will be particularly important if an act has become, and whether the offense committed by the accused. Power to determine the scope and content of the evidence is available in the administration. The intentions of the right to a fair trial, however, a party should not be deprived of the opportunity to design evidence. Subject of inquiry relates to the decision of the High Court in Prague on 13 4th 1993, sp. no. 6 A 81/92, SP no. 15/1993. It is a responsibility of the Administrative authority to deal with the admission of evidence submitted by the parties. This obligation, however, the administration has, so far as he should be manifested reality of the factual and legal basis of the decision clearly unnecessary

[25] Košičiarová, S., Priestupky a odporúčanie Výboru ministrov Rady Európy č. R (91) 1 o správnych sankciách, Notitiae ex Academia Bratislavensi Iurisorudentiae, Bratislava : Bratislavská vysoká škola práva, november 2009, s. 36

[26] Series A no. 63, page 18, section 37

or redundant.[27] Administrative authority is obliged to assess the significance of all the facts relating to the procedure for issuing a decision on the offense. Trivial facts are not required to be proven. Apart from the question of committing the offense ther administrative authority has to prove a person's legal status, even if appropriate assessment of the damage and the question of compensation. Importance in terms of evidence to sanction the person liable is also to analyze the intensity of the offense, the possibility of imposing a penalty or waive the the sanction and inpose a safeguard measure.

[27] Šiškeová, S. – Lavický, P. – Podhrazký, M.: Přehled judikatury ve věcech správního trestání. ASPI, a.s., Praha 2006, s. 658

Adequate time limit for the decision

The Decision[28] **on the administrative sanction**[29] is the result of the administrative procedure, the subject matter relates to the clarification of questions of guilt of the person committed the administrative offence.

Prove the guilt of the accused of the right handed down by the administrative authorities during the administrative procedure, which is to find the evidence base for a decision. In addition to the requirements of the principle of the rule of law[30] and the principle of material truth[31] the legislature has focused its attention on the time when creating administrative fine particulars of the process of the decision in the administrative procedure. For this reason, therefore, between the basic rules of procedure is expressly laid down in the administrative regulations have included the principle of speed of the proceedings.

According to the Art. 3. 3 of the Administrative Code The administrative authorities are obliged to dutifully and responsibly deal with any matter which is the subject of proceedings, resolve it on time and without undue delay and to use appropriate means which lead to a proper settlement of the case. If the nature of thing allows, is the administrative authority always bound to try to achieve a friendly resolution. The administrative authorities shall ensure that the proceeding was carried out efficiently and without undue burdens on the parties and others.

Czech legislature included that principle of the administrative proceedings in the Art. 6 par. 1 of the Act no. 500/2004 Coll. the Administrative Code (hereinafter referred to as the "Act. 500/2004 Coll.") containing the fundamental principles of public

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[28] Act No. 71/1967 Coll. on administrative proceedings (administrative procedure), as amended (hereinafter referred to as the „proper order"), pursuant to section 1 (1). 1 refers to a procedure in which the administrative authorities in the area of public administration to decide on the rights, interests or obligations of natural persons protected by the law and legal persons, unless otherwise provided by law. Within the meaning of § 46 of the decision must be in accordance with the law of administrative procedure and other legal provisions, it must be issued to the competent authority, must be based on the reliably detected cases and must contain the prescribed particulars.

[29] The sanction itself expresses an aspect of the relationship between public bodies and offender hmotnoprávny administrative misconduct.

[30] According to § 3 (2). 1 administrative procedure administrative authorities shall act in the proceedings in accordance with the laws and regulations. They are obliged to protect the interests of the State and society, the rights and interests of natural persons and legal entities and consistently require the performance of their duties.

[31] In accordance with § 3 (4) the first sentence of administrative procedure administrative decision must be based on the reliably detected case.

administration. Under this provision: "The administrative body handles things without undue delay. Makes the administrative authority acts within the statutory period or within a reasonable, if not a legal deadline set will be used to remedy provisions on protection against inactivity (§ 80). "[32] The importance of the fundamental principles of the activities of the administrative bodies of the Czech Slovak legislation, according to the administrative procedure as opposed to the rules of administrative procedure lies by S. Pospíšilová in the fact that in excess of its own substantive adjustments to the framework as they apply by law to administrative procedure in General in the performance of public administration, even in cases in which the law provides that the administrative procedure is not used, but this law does not contain a corresponding modification of these principles itself.[33] Referred to in Art. 177 (1) of the legislative arrangements have included legislator the Czech administrative procedure.[34] This approach explained the Czech legislator in the explanatory memorandum to this law.[35] The Slovak law applies the basic rules of proceedings under the Art. 3. 7 of the Administrative Code, say that the principles shall apply to the issuance of certificates, opinions, statements, recommendations, and other similar measures. The difference between the Czech and Slovak rules is that § 3. 7 Administrative Code specifically identifies vybrané material and technical capacity in the public sector and determine the appropriate application of the basic rules of procedure under the Administrative Code. Czech legislature adopted in 2004 an entirely new procedural code, which enshrined as a public service contract. Basic operating principles of administrative bodies to be used in the performance of government, ie across all processes taking place in the public sector. The problem is the requirement

[32] According to § 80 paragraph. 1 Czech Administrative Rules „the absence of an administrative body to adjudicate within the statutory period, the senior administrative authority shall take ex officio action against inaction, when he becomes aware." According to § 80 paragraph. 3 of this Act „anti-idle superior administrative body can do, even when it is clear from the circumstances that materially and locally competent administrative authority fails to comply with the deadline set for a decision on the request or initiate proceedings ex officio or continue the proceedings properly. After the deadline for a decision on the application can request action against inaction submit participant. „

[33] Pospíšilová, S. *Nečinnost a průtahy ve správním řízení.* Vliv EU a Rady Evropy na správní řízení v ČR a v Polsku. Brno: Tribun EU, 2010, s. 83

[34] *„The basic principles of administrative law specified in § 2-8 shall be used in public administration, even when a special law provides that the Administrative Code does not apply, but the treatment itself does not corresponding to these principles."*

[35] According to the document is a fundamental change over the prior law on administrative procedure that the proposed law governs the procedure for all administrative bodies exercising public administration, which is meant all public administrations activity directed outward, which is not covered by other legislation. This should reinforce the principle enshrined in Art. Paragraph 2. 3 of the Constitution of the Czech Republic and Art. Paragraph 2. 2 of the Charter of Fundamental Rights and Freedoms, which states: „State power to serve all citizens and can be applied only in cases within the limits and in the manner provided by law." The pursuit of a precise definition primarily procedural rights of the parties, which is clearly beneficial for both parties and for the administration, and which aims, amongst others, to prevent possible misconduct in a formal proceeding, so far resulted in some judicialization of the Administrative Code, which is similar in customary law. (available at: http://www.psp.cz/sqw/text/tiskt.sqw?o=4&ct=201&ct1=0, 02.07.2011, 16:11 hod.)

of speed and the particularity of the case. The length of time is prescribed by law. The benchmark rate is then time proceeding down the law. Generally do not know the actual speed quantify. However, we define the legality of the process. Fulfilling the requirements of speed we can only determine through fulfilling the procedure by the principle of legality.

The interests of the proceedings at the speed of the proceedings are, however, contradictory. For example, charged with an offence will not be interested in the issuance of the decision and in in the imposition of sanction. He shall make all activity to issue that decision thwarted. By contrast, the administrative authority will try to prove the accused guilty in the shortest amount of time.

Approach of The Council Of Europe

The requirement of proportionality of the time limit for a decision deals with the approach of the Strasbourg authorities protecting the individual rights. The European Convention for the protection of human rights and fundamental freedoms (hereinafter referred to as "the Convention")[36] enshrines the requirement of proportionality-limit them to hear the case in art. 6 (1).[37] While this warranty expressly applies only to proceedings before the Court under the Convention or authority of the type, with the development of the doctrine of full jurisdiction and autonomy for the interpretation of the concepts of guarantee of the adequacy of the protection period applies, by analogy, štrasburskými authorities and the proceedings before the administrative authority.

Even if the speed of the proceedings should never be preferred prior to a fair decision things (Justice understood as an objective and lawful decision), so just the contents of the concept of fairness of the trial, have long been associated with the slow procedure justice threatens.[38] The requirement of reasonableness of the period of responsibility of the State for the protection of the rights of connect the Strasbourg authorities with the delay in the proceedings. According to j. Sváka country is responsible for delays in the court proceedings, which gave rise to the judicial authorities and other public authorities.[39] The argument may then apply to the activity

[36] Convention for the protection of human rights and fundamental freedoms

[37] *Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, the determination of his civil rights and obligations or of any criminal charge against him. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties or the extent deemed court as strictly necessary in the opinion of the special circumstances where publicity would prejudice the interests of justice.*

[38] Svák, J. *Ochrana ľudských práv (z pohľadu judikatúry a doktríny štrasburských orgánov ochrany práv).* II. rozšírené vydanie. Žilina : Poradca podnikateľa, s. r. o., 2006, s. 544

[39] Svák, J. *Ochrana ľudských práv (z pohľadu judikatúry a doktríny štrasburských orgánov ochrany práv).* II. rozšírené vydanie. Žilina : Poradca podnikateľa, s. r. o., 2006, s.564

of a public authority before the Court (unless the public authority has the obligation of procedural) or in the sense of following on the decision-making activity of a public authority.

The proceedings before the Administrative Tribunal, is not part of the administrative procedure. A merger of the administrative and judicial proceedings would no be considered positive neither by the legal practice nor by the jurisprudence. These formalized procedures mentioned above are legally separate and autonomous.

The adequacy of the time limit for a decision in the administrative proceedings is directly exoressed in the Art. 7 Recommendations the Committee of Ministers the Council of Europe to the Member States no (2007) 7 on good administration, according to which the authorities of the public administration Act and shall carry out their duties within a reasonable time.

The recommendation of the Committee of Ministers of the Council of Europe to the Member States no (2007) 7 on good administration follows the requirements of the resolutions of the Council of Europe Committee of Ministers contextually no (77) 31 on the protection of individuals with regard to the decisions of the organs of the public administration (hereinafter referred to as "the resolution"). The resolution itself does not establish that the requirement itself. The particulars of the time during the administrative procedure provides, in particular, in view of the duty of the administrative body. Under the art. 2. 2, the person concerned shall be informed in good time of the resolution is, in appropriate cases, and in an appropriate manner in the present case, on the rights under art. I 2. of the resolution.[40] Under art. V. Resolutions if the administrative act that is published in written form is detrimental to the interests of the person concerned, indicates the rights, freedoms and legal remedies available against it, as well as the time limits for their use.[41]

The requirement to adjust deadlines administrative proceedings generally comes from the Recommendation of the Committee of Ministers to Member States no. (2007) 7 on good governance and also from the following Recommendation of the Committee of Ministers of the Council of Europe. (80) 2. Mentioned recommendation specifically emphasizes the Administration within a reasonable time. The answer to the question of what can be considered a "reasonable" period according to the Recommendation R (80) 2 shall give several conditions. In order to protect the recipient, however, a reasonable time will depend on:

- Complexity of the case;
- The urgency of the decision on the matter;
- Number of recipients participating;[42]

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40 *With regard to any administrative act of a nature capable of probably adversely affect its rights, freedoms and interests of the person concerned may submit to the facts and arguments, and, where appropriate, propose to the evidence which will be taken into account by the administrative body.*

41 *Where an administrative act which is given in written form adversely affects the rights, liberties or interests of the person concerned, it indicates the normal remedies against it, as well as the time-limits for their utilisation.*

42 Košičiarová, S. *Ústavnoprávne aspekty princípov dobrej verejnej správy a odporúčanie Výboru ministrov Rady Európy členským štátom CM/Rec (2007) 7.* Acta Universitatis Tyrnaviensis – Iuridica. VII,2010. Trnava: Typi Universitatis Tyrnaviensis, 2010, s. 338

Time limits for the administrative punishment

Modification of time limits for the decision in the administrative punishment in particular, has the material aspect. Consider the length of the term for making the decision on administrative penalty has the meaning only of the substantive law governing the extinction period while maintaining the responsibility for the administrative offence. However, the problem of modification of the administrative punishment is its fragmentation.[43] Merits of administrative offenses are contained in a number of specific rules. The legislature so provides the conditions for termination of the administrative liability depending on which category the administrative offenses by adaptation includes.

On the issue of the adequacy of the Administration at the time the substantive law primarily because response and decision-making activities of public authorities. Rich group decisions in our region are legal infringement case, but the punishment of administrative law in the area of broadcasting and retransmission and also administrative punishment carried out inspections and supervisory authorities.

Liability for offenses

In the offenses contains relatively comprehensive treatment of substantive law and procedure, Act no. 372/1990 Coll. on misdemeanors, as amended. Material conditions for the termination of liability reflects the above provision in § 20 that the offense can not hear if it was committed by two years elapsed, it can also be discussed, if the penalty or the remainder taken if the offense covered by an amnesty. Procedural legal relationship that arises initiation of administrative proceedings against a party provides not only the procedural law of the Slovak National Council no. 372/1990 Coll. and pursuant to § 51 of the Administrative Procedure[44].

The time limit for a decision contains the the Art. 49 of the Administrative Code.[45] From legal-theoretical point of view it is the time-limit to issue the decision. The for-

[43] The theory of administrative law is divided into administrative offenses:
- Violations of individuals
- Other administrative offenses for individuals affected by the fault,
- Administrative offenses of legal persons and natural persons doing business,
- Proper disciplinary offenses of individuals
- Proper public order offenses by natural persons and legal entities.

[44] If it is not in this or any other Act, the provincial offences Act apply to proceedings concerning the General rules on administrative procedure.

[45] Pursuant to section 49 (2). 1 administrative procedure in simple things, especially if it may be decided on the basis of documents submitted by parties to the proceedings, the administrative

mulation of the provision assumes the possibility of the extension of the by law laid down time in the cases, respectively for compliance with the law specified conditions.

It is a special regulation not covered by Art. 27 par. 1 of the Administrative Code. The wording of § 27 par. 1 of the administrative order that, under that provision it is the period determined in relation to the parties, while the Art. 49 regulates the periods primarily addressed to the administrative authority. The actual provisions of time limits pursuant to Art. 27 par. 1 of the Administrative Code shall find a purpose in respect of the application of the procedural rights of the parties to it available to the administrative proceedings, or especially in the design procedures.

The provisions of § 49 of the Administrative Code is a general adjustment periods for a decision in administrative proceedings. However, a special rule provides for different periods, the adjustment will take precedence over the provisions of the Administrative Code.

The relationship of all these kinds of deadlines described as the judgment of the Supreme Administrative Court of the Czech Republic[46] (hereinafter referred to as "the Supreme Administrative Court of the Czech Republic '), no. 1 As 4/2009, dated March 6th 2009. According to the decision of the defendant authority argued that the duty of administration to invite the applicant to supplement the appeal in many cases led to the termination liability offense. However, the court took this argument to the contrary. Determination of conditions additional time to complete the appeal[47] is within the discretionary powers administration and can not be expected to correct in practice normally require the provision unreasonably long periods (eg periods longer than the actual period for filing an appeal, thus constituting a significant time period the proportion of the length of limitation period under § 20 of the Act no. 200/1990 Coll. offenses (hereinafter referred to as "the Act no. 200/1990 Coll.").[48] is diskrécii administration and can not be expected to correct in practice normally require the provision unreasonable long periods (eg periods longer than the actual period for filing an appeal, thus constituting a significant time period The proportion of the length of limitation period under § 20 of CNR no. 200/1990 Coll. offenses (hereinafter Referred to as "the Act no. 200/1990 Coll.").

authority shall decide without delay. Within the meaning of section 49 (2). 2 administrative procedure in other cases, if a specific law provides otherwise, the administrative authority shall decide within 30 days of the opening of proceedings in the matter; in particularly complex cases, certainly no later than within 60 days; If it cannot be given the nature of things to decide within this time limit, it can reasonably be extended nor the appellate body (body competent to decide on the decay). If the Administration cannot decide until 30, or within 60 days, it shall inform the party to the proceedings, stating the reasons.

46 In that case ruled the Supreme Administrative Court of the Czech Republic about the defect of the administrative procedure of refusing to complement the appeal against the decision of the administrative body of the infringement proceedings.

47 According to § 39 par. 1 of the Act. 500/2004 Coll. administrative Procedure

48 According to the said modifications to the Czech Act cannot be heard, unless the offense from his having committed one year has elapsed. However, this time limit shall be suspended for as long as the same („tentýž") the deed has led the prosecution.

Slovak Act no. 71/1967 Coll. binds the deadline for a decision pursuant to § 49 paragraph. 2 Administrative Code of the complexity of things, or aspects depend on particularities of the case. Czech Act no. 500/2004 Coll. is accurate in the sense that the right kinds of presumed procedural steps and their performance linked to the periods. The Act no. 500/2004 Coll. sets in the Art. 71 par. 3 point. a)[49] time-limit for a decision to carry out a hearing. Adequacy of time expressed Czech adjustment primarily through substantive termination liability period for both criteria and deadlines for a decision. The requirements of the legislation builds stable decision-making, the Supreme Administrative Court of the Czech Republic, and their views on legal deadlines for the duration of the administration. These rules are considered to be transparent.

In its judgment of 22 First 2009, sp. no. 1 As 96/2008 joined the Supreme Administrative Court of the Czech Republic adequacy requirements limit the principle of material truth. Defendant authority imposed a fine of 12,000 to the party, - and 16-month disqualification drive for committing an offense against the safety and flow of traffic according to Art. 22 par. 1 point f) as well as an offense on the field of protection against alcoholism and other drug addiction according to Art. 30 par. 1 point h), i) of the Act no. 200/1990 Coll. (hereinafter referred to as "the Act no. 200/1990 Coll."). Charged with the offense began to actively exercise their procedural rights to the appeal. In addition, the administrative authority evidence failed to interview witnesses who actually perceive the material to determine the facts of the case. Defendant authority argued that the party could assert "pleas" at first instance, t. j. able to comment on the matter, propose evidence and challenge the evidence sought and implemented by administrative authorities. A comparison of the applicant's (subscriber's) attitude throughout the proceedings Administration concluded that the accused deliberately delayed implementation of its opposition to avoid sanction due to termination liability offense.

The argument could set the Supreme Administrative Court of the Czech Republic agree. The administrative authority may not refuse a proposal with evidence pointing out that was not raised in the first instance, because such a procedure not supported by current legislation administrative proceedings. Similarly, the proposal can not just reject it a priori considered nevierohodný. In response to concerns about the administration of exceeding the limitation period is required to examine whether the evidence of the accused design can help to clarify things. Therefore the administrative authority does to carry out the proposed evidence. It is obliged to examine its relationship to the subject of the proceedings.

The decision by the legal-theoretical site follows the judgment of the Supreme Administrative Court of the Czech Republic, no. 1 As 33/2010 of May 5th 2010, where the judicial review arguing the administration principles of economy and speed. Following this plea, the accused refused the right to apply new facts and evidence to the appeal. The court objected application of the principles of economy and speed

[49] *„If you can not immediately issue a decision, the administrative authority shall issue a decision within 30 days of initiation, to which is added time to 30 days, if you need an oral hearing or a local inquiry, if it is necessary to call someone, to have someone show or deliver a public notice to persons who demonstrably fail to deliver, or if it is a particularly difficult case. „*

of the Administration refused. Both principles must be "consumed" in the context of an offense, they can not prevail over the right of the accused to defend throughout the proceeding.

In proceedings before the Supreme Administrative Court of the Czech Republic, (the decision no. 5 As 10/2010), the accused claimed responsibility for the demise of the offense misdemeanor expiry of the one-year limitation period for the hearing. The applicant was by decision of February 6th 2008 found guilty of committing an offense under Art. 22 par. 1 point. f) and under Art. 22 par. 1 point. i) of the Act no. 200/1990 Sb. The accused appealed against the decision of the administrative body by an appeal of June 19th 2008. The administration, however, self-signed, it should have according to Art. 37 of the Act no. 500/2004 Coll. Defect remedied by filing a challenge to the administration in addition provided a five-day period. On 30 6th 2008 sent a new administrative body charged with filing marked an appeal. Administrative authority, however, concluded that it was a separate appeal content and not complete withdrawal of 19 6th 2008th Administrative courts in that case therefore examined the content and unity of first appeal.

Assessment of the timeliness of the appeal substantially affects the question of termination of liability of the accused for an offense. The appeal of June 6th 2008 decided the Appellate Body on August 26th 2008, t. j. two days after the deadline for termination of liability for an administrative offense. The court said that it is necessary to examine the content and unity of first appeal. Thus, if the appeal of 30 6th 2008 material follows the actions proceeding in the first instance, it is necessary to conclude the termination of responsibility of the offender for the offense.

In these decisions, the Supreme Administrative Court of the Czech Republic criticized particularly inconsistent approach to the principles of the procedure. Administrative authorities often applied the principle of speed and efficiency, but at the expense of the principle of material truth, the right to appeal or the rights of parties to comment on the matter. Generalizable principles set procedural obligations to the administration. Violation of the principles of administrative authority in breach of its procedural obligations and rights of the accused while the offense. It can therefore e. g. with the intent to act within a reasonable time priority principle of speed, then it does not manage to find out the real state of things, or does not have the space to allow the parties to exercise their procedural rights.

Decision of the Supreme Administrative Court of the Czech Republic, no. 9 As 89/2008 of June 8th 2009, dealt with a situation where the applicant had committed the an offense against the safety and flow of traffic on the roads according to Art. 22 par. 1 point. b) of the Act no. 200/1990 Coll. The ofender led an automobile while intoxicated. In the first instance the offender was found guilty and the penalty was imposed on him. In proceedings before the administrative court in addition to sound proof the applicant had challenged the fact that the hearing for the offense statutory deadlines have not been met, if the police did not carry notice of violation within the prescribed period of 30 days and subsequently the administration could not meet the prescribed period of 60 days on the proceedings of offenses. Court did not consider that objection to be well founded, because the complainant avoided termination liability offense. According to the court, the challenged decisions of administrative authorities issued within the time limits set by law.

The applicant can, in the opinion of the author confused the limitation period with procedural deadlines. The administrative authorities shall recognize the complainant guilty of committing the offense and impose a penalty because they did not forfeit the right, even if not complied with the procedural deadlines.

Responsibility for other administrative offenses

In contrast to the treatment of offenses situation is different in other administrative offenses. Substantive period for termination liability down specific rules, in depending on what section of the public administration responsible entity commits an administrative offense. From this fact derives the legal-theoretical division groups administrative offenses.

According to L. Madleňáková are clear reasons that the concept of criminal charges[50] in terms of making a decision about any infringement which is punishable by a penalty, that is, not only for the legal offenses, but also for the correct delinquencies[51], both natural persons and legal persons.[52]

A valid modification of the Slovak Act No. 301/2005 Coll. criminal procedure (hereinafter referred to as the "criminal procedure") shall limit the law enforcement authorities of the stringent time limits for decisions. For example, the time limits for the duration of the standard are binding under Art. 76 of the code of criminal procedure[53] and the Art. 76a of the code of criminal procedure[54]. They recommend the length of criminal proceedings. Another example of the period, which provides a code of criminal procedure, is contained within the Art. 209 expressing the time lim-

[50] At this point, the author has in mind the concept of „criminal charge" under art. 6 (1). 1 of the Convention, under which an autonomous interpretation to the Strasbourg authorities include the protection of the rights and the accusations of irregularities and allegations of other administrative offences, excluding the category of disciplinary offences committed within the framework of interest and academic authorities.

[51] More to do: NB. footnote 28 More to do: NB. footnote 28

[52] Madleňáková, L. *Probíha v ČR řízení o uložení správních sankcí a jejich ukládání dle zásad Rady Evropy*, Vliv EU a Rady Evropy na správní řízení v ČR a v Polsku. Brno: Tribun EU, 2010, s. 107

[53] The total period of detention in pre-trial detention with the court proceedings may not exceed
a) twelve months if the conducted the prosecution for a misdemeanor
b) thirty-six months if kept prosecuted for a crime,
c) forty-eight months if the conducted prosecutions for serious crime.

[54] If he leads the prosecution for a particularly serious crime for which can be punishable by deprivation of liberty for 25 years or the penalty of deprivation of liberty for life, that it was not possible for the difficulty of the case or other serious reasons come to an end before the expiry of the total period of custody in criminal proceedings and the release of the accused to liberty at risk will be thwarted or substantially difficult achieve the purpose of criminal proceedings, the Court may decide to extend the total period of custody in criminal proceedings for the necessary period of time, even repeatedly. The total period of custody in criminal proceedings together with its extension according to the previous sentence, however, shall not exceed sixty months.

its for completion of the investigation.[55] However, the author considers it necessary to point out differences between criminal and administrative proceedings, where criminal proceedings are characterized by stringent interference with the rights and liberties of the accused. It also referred to a formalized procedure regulated activity tribunal whose procedures and work organization governed constitutionally enshrined principles and legal guarantees of independence and impartiality of the judiciary. Although the above reasons, and especially in contrast to a different way of decision-making by government bodies within the criminal proceedings or criminal courts are to be considered positively in the view of the deadlines for decision. Adequacy of time for a decision in criminal proceedings may be determined by the duration of interference with the rights and freedoms of the accused and also by substantive limits for the extinction of criminal liability.

The analogous approach with regard to the possibility of the application of criminal procedural guarantees of the right to a fair trial highlights a number of decisions of the Supreme Court of the Slovak Republic in response to the request within a reasonable time of the decision.

Merits of the decision of the Supreme Court of the Slovak Republic (hereinafter referred to as „the Court") no. 2 SZ 10/2010 are aimed at the non-retroactivity. But guilty of an administrative offense in this case pointed to the reasonableness of the time for decision. In those proceedings, the court considered the decision of the Council for Broadcasting and Retransmission (the "Council"), no. RP/13/2010 of 23 Second 2010 imposing a fine of EUR 3.350, - per Company MAC TV, p. r. a., for the administrative offense pursuant to Art. 67 par. 5 point. a) Act no. 308/2000 Coll. on Broadcasting and Retransmission and amending the Act no. 195/2010 Coll. on telecommunications, as amended. Board erred in law found the facts. Assess an administrative offense under the Act, which was effective at the time it was committed. The applicant also argued missed limitation period for termination of liability for an administrative offense.[56] According to the court decision, the Council managed to issue an administrative penalty in the one-year limitation period. The problem with this decision, though it was a breach of the principle of non-retroactivity, however, the court interpreted the passage of time and the conditions for the establishment and termination of administrative liability.

For that case the court applied § 246d, first sentence, of Act no. 99/1963 Coll., That if particular law governing offenses, disciplinary, disciplinary and other administrative offenses set a time limit for termination liability, or for enforcement, those periods during proceedings under this section shall be suspended.

According to the explanatory memorandum to the draft amendment to the Act No. 99/1963 Coll., the 2004[57] This new provision should address the lack of current

[55] The investigation of particularly serious crimes, it is necessary to come to an end within six months of indictments; in other cases, within four months.

[56] There has been a breach of the obligation to tvrdenému on 21. September 2008. To interrupt the passage of a one-year limitation period occurred at the time of the court proceedings, i.e. from 15. June 2009 to 11. December 2009. The contested decision was issued by the Council on 23 July. February 2010. Thus, at have resulted from 22. September 2008 to 15. of June 2009 and from the 12. December 2009 until 11. February 2010.

[57] Available at http://wwwold.justice.sk/kop/pk/2004/pk04018_04.pdf

legislation, because it is interrupted by law the periods for termination liability offenses, administrative offenses and the like. Issuing decisions on these matters substantive law limit the time within which legal proceedings (often on purpose-made actions) expire as a result of cancellation administrative decision is not enough time for further proceedings and the imposition of sanctions if the otherwise statutory requirements are met.

A similar application of that provision was also before the Supreme Court of the Slovak Republic, no. to. 1 SZ-o-NS 68/2004[58], where the applicant first Council argued that the disappearance of the applicant in the 3rd resulted in the cessation of all his responsibilities. The court held that the plaintiff in the first Council has become the procedural as well as substantive successor to the applicant in the 3rd place, and during the trial. The termination of liability could not happen.

The decision no. 2 SZ 6/2006 of 18 in April 2007 the Supreme Court of the Slovak Republic stressed the need for proper punishment in a reasonable time. The argument can be found within the Art. 4. 1 of the Recommendation of the Committee of Ministers of the Council of Europe. (91) 1 on administrative sanctions. In this case the applicant has been saved three penalties for the commission of one offense. Council has imposed three fines, and because the action sought should fulfill three facts administrative offenses under the Act no. 308/2000 Z. of. However, the court did not accept this punishment for his contradiction of the principles of sentencing embodied in Art. 50 of the Constitution of the Slovak Republic no. 460/1992 Coll. and Council Decision set aside and the matter returned to action. At the same time noted that the period for termination of the liability for other administrative offense during court proceedings under § 246d Act. 99/1963 Coll. did not expire.

Administrative procedures operate in particular the principle of legality expressing constitutional requirement of Article. 2. 2 of the Constitution of the Slovak Republic. Governments can act only on the basis of the Constitution, within its limits, and to the extent and in the manner provided by law. Claiming to act continues to comply with all the procedural obligations. If the administrative authority shall apply the principle of one procedure over another, does not act in accordance with Art. 2. 2 of the Constitution of the Slovak Republic.

The regulation of periods within the administrative punishment is not contrary to the criminal law framework. Criminal law is based on assumptions for the creation and termination of liability on the principle of individual criminal responsibility subjective. In matters concerning administrative liability but individuals are only one of the groups responsible entities.

Although administrative courts and enforced in a reasonable period correct assessment procedure analogous access to administrative punishment, derived from the so-called special criminal procedure guarantees fair procedure.[59] Time frame conditions for the establishment and termination of administrative liability can be

[58] Judgment of 22. November 2005

[59] Judicial case law in the above cases is based not only on the case-law and doctrine of constitutionally enshrined protection Strasbourg authorities, but above all guarantees of criminal procedure expressed in art. 50 of the Constitution of the Slovak Republic No. 460/1992 Coll.

represented graphically as a triangle. Hypotenuse is substantive period for termination liability. Procedural deadlines under the Art no.246d of the Act no. 99/1963 Coll. expresses on the one hand and the protection of the rights of a party to the other, creating the cathetuses.

Substantive level of the problem lies in the fact that the legislature shall consider the seriousness of the offense and the subsequent setting a deadline for the termination of liability for an administrative offense. On the question of adequacy of time by the legislator in the legislative process could answer means that the term of limitation period will correspond to the possibility of legal administration take action.

Discretionary powers of administrative bodies

The Constitution of the Slovak Republic No. 460/1992 Coll. (hereinafter referred to as "the Constitution of the Slovak republic") provides in art. 46 recipients of the public administration the right to judicial and other legal protection.[60] The constitutional basis for the legal status of public subjective right at the same time reflects the administrative courts. The jurisdiction of the courts to review decisions of the public authorities included the legislature into Art. 142 (1) of the Constitution of the Slovak republic.[61] Provisions of Article 46 and paragraph 142. 1 of the Constitution is the relationship conferring jurisdiction executor public authorities and public subjective right anchoring it to the addressee. Natural or legal person may apply to the courts, not only in matters of private disputes, but also to gauge the decisions of public authorities. Above provisions guarantee the individuals to the lawfulness of the administrative procedure and if it fails its judicial the survey as a legal guarantee for the public administration.

Public authorities realized power of government as an expression of executive power in the state. In its decision-making activities ensure effective administration of the various sections of the public administration. Furthermore, educating and show repression against unlawful conduct recipients of government. Therefore conclude administrative responsibility within relationships.

"In the area of administrative punishment and the imposition of administrative sanctions committed to the principle of legality administration to consistently adhere to the premise that no one will be punished otherwise than by reason and in the manner provided by applicable law. When applying the law to particular facts is necessary in addition to grammatical and logical sense based on the so-called. "Spirit of the law", i.e. purpose, the legislature followed its adoption."[62] Administrative

[60] Within the meaning of art. 46 (6). 1 of the Constitution of the SLOVAK REPUBLIC everyone can claim their right to an independent and impartial procedures laid down by the law court and in cases provided for by law at another body of the Slovak Republic. Under art. 46 (6). 2 of the Constitution of the SLOVAK REPUBLIC who claims to have been on their rights by a decision of a public authority, you may point it should go to a court to review the legality of such a decision, unless the law provides otherwise. However, it must not be excluded from the jurisdiction of the Court review of decisions concerning fundamental rights and freedoms.

[61] Courts adjudicate in civil and criminal matters; the courts review the legality of decisions of the public authorities and the legality of the decisions, measures or other interventions of public authorities, if the law so provides.

[62] The judgment of the regional court in Bratislava, SP. zn. 2S 200/2005-30, dated 03.06.2007

authorities should be strictly avoided in this way formal and technical interpretation of the law.

Contrary to the criminal proceedings the administrative proceedings on the administrative sanctioning is of unilateral nature. Criminal proceedings operate in accordance with the Art. 2. 14 of Act no. 301/2005 Coll. Code of Criminal Proceedings (hereinafter referred to as the "Criminal Code"), the adversarial principle. The parties to the proceedings before the criminal court straight are equal. Conversely, the administration of the administrative authority initiates proceedings to determine the actual state of affairs and draws against the party responsible. "The boundaries between criminal offenses for which the sentence imposed by the court and the offenses for which the penalty is imposed by administrative authorities, are a manifestation of the will of the legislature"[63]. Due to the merging tasks "applicant" and "judge" in positions of administrative authority was desirable to anchor at the Council of Europe standards protecting the rights of the accused at the level of administrative punishment. According to Art. 6 Recommendations of the Committee of Ministers of the Council of Europe (91) 1 is essential in the administrative proceedings concerning administrative sanctions in addition to the guarantees of a fair administrative proceeding pursuant to resolutions of the Committee of Ministers of the Council of Europe. (77) 31 and fixed in place safeguards in criminal proceedings[64].

In its activities are not properly independent and impartial bodies. Promote the public interest. Legal authorities do not meet the attributes type. In contrast, courts are classical representatives of the "guardians of legality." Their legal structure resulting from the principle trojdelenia can provide them legal separation and independence in relation to the legislative and executive power. Therefore the judicial authorities meet the requirements of the Art. 6. 1 of the European Convention on Human Rights and Fundamental Freedoms (the "Convention").

Strasbourg protection authorities assess allegations of administrative offense as a criminal charge within the meaning of Art. Paragraph 6. 1 of the Convention. Judicial doctrine of the autonomy of the concept of criminal charges and other related concepts in the Convention is justified also because the situation in the legislation and legal responsibilities of individuals in the various Member States of the Council of Europe is not the same.[65] The guarantees under the Convention apply only to the protection of human rights concerning a judicial proceedings. It touches upon the requirements of the administrative procedure only indirectly, through the anchoring standards of judicial review of the decisions of government. The actual procedure for review of a public authority can not be regarded as a continuation of the administrative proceedings. Position of the nobility in the survey only court decision puts

[63] Judgment of the Supreme Court of the Slovak Republic, SP. zn. 8 Sžo 147/2008, from day 12. March 2009

[64] Judgment of the Supreme Court of the Slovak Republic, SP. zn. 8 Sžo 147/2008, from day 12. March 2009

[65] Košičiarová, S. Priestupky a Odporúčanie Výboru ministrov č. R (91) 1 o správnych sankciách, Notitiae ex Academia Bratislavensi Iurisprudentiae3/2009, Bratislavská vysoká škola práva, Bratislava: 2009, s. 30

the law and administrative authority in the process of equality with the applicant - originally involved in administrative proceedings.

Also for these reasons, the Council of Europe is developing efforts in the formulation of the principles of good governance as a framework for the application of the procedural safeguards required already at the level of the administrative proceedings. The role of the courts in a survey of administrative acts is primarily the task of supervision. Judicial decisions, administrative acts as a substitute. Applying the principles of good governance makers follow the recommendations of the Committee of Ministers of the Council of Europe in particular, quality performance management that does not unnecessarily burden the courts and would be clear and transparent to its recipients.

Recommendations of the Committee of Ministers of the Council of Europe - and the nature of the system of the administrative punishment

Recommendations of the Committee of Ministers (the "Recommendation"), reflecting a desire for a qualitative shift in anchoring legal safeguards for the public administration. This contrasts, however, the binding sources of international law as "soft law". International law is a legal system that is characterized by a great variety of sources. The basic framework of sources of international law defines the Art. 38 of the Statute of the International Court of Justice.[66]

The importance of the recommendations made by the Committee of Ministers of the Council of Europe lies in the formulation of the principles of how the interpretative rules, which should control the decision-making processes in public administration. Principles are the standards to be followed for the reason that it calls for Justice (justice), fairness (fairness) or other dimension of morality (morality)[67]. A set of related documents will be due to the fragmentation of the Slovak administrative arrangements offenders[68] and a Court of survey of the administrative punishment as follows:

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[66] Galdunová, K. Súdna tvorba práva na medzinárodnej úrovni. III. Slovensko-české medzinárodnoprávne sympózium, Zborník príspevkov Bratislava 23. – 24. októbra 2009, Slovenská spoločnosť pre medzinárodné právo pri Slovenskej akadémii vied, Bratislava: 2010, s. 121

[67] Skulová, S. Právní princípy dobré správy? Principy dobré správy, Sborník příspěvků přednesených na pracovní konferenci, Kancelař veřejneho ochrance prav, Masarykova univerzita, Brno: 2006, s. 61

[68] The theory of administrative law is divided into administrative offenses:
- Violations of individuals
- Other administrative offenses for individuals affected by the fault,
- Administrative offenses of legal persons and natural persons doing business,
- Proper disciplinary offenses of individuals
- Proper public order offenses by natural persons and legal entities.

- Resolution of the Committee of Ministers of the Council of Europe. (77) 31 on the protection of individuals with regard to administrative action (such as a document stipulating the general procedural principles);
- Recommendation of the Committee of Ministers of the Council of Europe. (80) 2 on good consideration;
- Recommendation of the Committee of Ministers of the Council of Europe. (91) 1 on administrative sanctions;
- Recommendation of the Committee of Ministers of the Council of Europe. (2004) 20 on judicial review of administrative acts;
- Recommendation of the Committee of Ministers of the Council of Europe. (2007) 7 on good administration.

Different nature of liability of entities of different application rates of individual recommendations will be based. For example, the recommendation of the Committee of Ministers of the Council of Europe (91) 1 on the administrative sanctions shall not apply to disciplinary punishment. In this context will therefore be excluded its application specific administrative disciplinary offences.[69] The intent of this part of the post is not to analyze the relationship of the individual recommendations of the types of administrative offences, but only to outline their meaning in relation to judicial review of decisions in matters of administrative punishment. In other parts of the referátu, the author wants to focus primarily on the application of the administrative account.

The extend of the administrative discretion

Correct consideration in the administrative proceedings manifested in several ways. First, it reaches the proper authority in the evaluation of the decision documents. In accordance with Art. 34 par. 5 of the Act. 71/1967 Coll. on Administrative Proceedings (Administrative Code), the administrative authority evaluates the evidence at its discretion, and to each of them separately and all of them in their mutual relations. According to the decision of the District Court Bratislava I, no. 17C 176/02 to 143 of February 25th 2003 consists of appreciation in fixing facts in evaluating the evidence, in which the Authority has the right but also the obligation to subscribe to

[69] Different, however, is in our opinion the situation according to the law No. 73/1998 Coll. on State service of members of the police corps, Slovak information service, the Corps of the prison and judicial guard of the Slovak Republic and the railway police. Within the meaning of article 52 (1). 2 this Act shall be heard in the proceedings under this Act, the police officer that has the characteristics of an offence. For the police officer having the characteristics of an offence may be imposed disciplinary sanction so (as a condition of use of the recommendations of the Committee of Ministers of the Council of Europe no negative (91) 1 of administrative sanctions), however, the procedure in this proceeding can be in our opinion, be subject to the procedural safeguards under this recommendation.

one of several claims[70] and other refuse, all using the principles of logical thinking. The application of discretion is therefore reflected in the decision in this case, and therefore can only be examined on the basis of an appeal against the decision.

The aim of the discretion of the administration is to assess the grounds on which to build consideration when choosing the penalty.[71] The procedure is also apparent from the principle of material truth grounded in Art. 3 par. 4 of law No. 71/1967 Coll. on administrative proceedings (Administrative Code).[72]

In accordance with Art. 2. 4 Recommendations of the Committee of Ministers of the Council of Europe. (80) 4 on the proper consideration (the "Recommendation of the Committee of Ministers no. (80) 4") should be the administrative authority in the application of discretion to balance the adverse effects, which could have decision rights, freedoms and interests of the parties and to the same procedures.

As the intensity of the penalty imposed, it imposes administrative authority in the statutory rate, so that given the upper limit of the rate perform its statutory function. The party responsible for the violation found required by law is irrelevant, and then correct the deficiencies, which is the responsibility of each person.[73] An important aspect of discretion is the internal systematics.

Resolution of the Committee of Ministers of the Council of Europe (77) 31 implicitly expresses in Art. 1 and 4 on the application requirements of discretion. Embedding process rights of a party to the proceedings:

- The right to be heard,
- The right to justify decisions

The rules formulate the procedural use of the discretion. Recommendation of the Committee of Ministers of the Council of Europe. (80) 2 referred to in Art. 3 to use the

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[70] Institute proper account therefore does not apply only to an assessment of the evidence, but even positioning decisions involving in the meaning of section 32 (1). 2 administrative procedure, in particular to submissions, proposals and comments of the parties. The correct order is different from the concept of a basis of decision terminologicky the concept of evidence and proof of concept subsumuje within the concept of backing the decision.

[71] That obligation can be illustrated by example. decision of the Nuclear Regulatory Authority (the „Authority"), sp. no. 66/2001. Decision Authority imposed a fine of EUR 100 000 Slovak Electricity and. s. for breaching the Act. 541/2004 Z. of. on the Peaceful Uses of Nuclear Energy (Atomic Act), as amended. The grounds for the decision authority argues as follows: „In determining the fine authority under § 34 paragraph. (9) of the Atomic Act takes into account the severity, duration and possible consequences of the breach of the obligation to make changes to impact on nuclear safety to the prior approval of the Authority, the obligation of authorities reviewed or approved documentation and access to the supervised entity in the aftermath of the event. Administrative authority considers that a fine in this amount is due to its repressive-educational function, as well as taking into account the statutory limits, fine sound and also a fine corresponding to the perceived illegal status and the nature of the offense. „

[72] The decision of the administrative authorities must be based on the reliably detected case. Administrative authorities shall see to it that in deciding whether in fact identical or similar cases, avoid unwarranted differences.

[73] The Decision of the Slovak trade inspection, the Central Labour Inspectorate, see: the Slovak trade inspection, based in Bratislava, Slovakia, SP. zn. CS/0313/99/2010 dated 03.08.2010, available at:http://www.soi.sk/files/documents/pravoplatne-rozhodnutie/druhostupnove/ui322010.rtf

rules of fair administrative procedure contained in the Resolution of the Committee of Ministers of the Council of Europe. (77) 31. The relationship of these documents is the relationship of subsidiarity, which establishes general rules for the resolution of the Committee of Ministers of the Council of Europe. (77) 31.

Why should the rules be reflected the limits of discretion? According to D. Hendrych is the importance of discretion in its application in situations where the legislature is unable to foresee all possible treatment conditions, respectively decision depends on several varying factors.[74] Procedural rights of the accused limited administrative authority in the application of discretion from a substantive matter. The content and features alone can not account legal practice or theory to quantify other than through an examination of the rules of procedure and the status of compliance with the procedural rights of the accused.

According to E. Horzinkovej correct reasoning can be abused. For this reason, therefore, should be used as little as possible and appropriate. The measure of proportionality, taken into account by the administration is to be guarantees of fair administrative procedure.[75] P. Svoboda highlights the importance of the General principles of fair trial enshrined in the constitutional order of the State, which are applicable to any proceedings before the public authorities, of any rights or obligations of natural or legal persons in cases of any kind.[76]

Account of the relationship of the administrative body and administrative court expresses art. 8 Council of Europe Committee of Ministers Recommendation No. (91) 1.[77] Performance of administrative justice and the proper punishment power are separate processes of the legal system. Administrative courts have basically control the legality of the administrative process. The correct punishment may interfere by moderation privileges to Slovak administrative court granted the amendment Act. 99/1963 Coll. Code of Civil Procedure, as amended (the "Civil Code") – Act no. 424/2002 Coll.

According to D. Nikodým was the main ideological intention of the legislature to respect Art. 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Judicial review of administrative action is not limited to the legality of administrative decisions, but allows the court to decide in full jurisdiction t. j. including proof. It should be noted, however, that the legislature can not avoid terminological misconduct, if the amendment to certain provisions (§ 244) leaving only the term "review of legality." In defining the scope of legislative administrative justice legislator should be based on its dual function and importance. In addition, the means of protecting individual rights, and serves as the control of government. Proper justice is not just the right application, as opposed to the activities carried out

[74] Hendrych, D. Správní právo. Obecná část. 6. Vydáni. Praha : C. H. Beck. 2006, s. 92

[75] Horzinková, E. Správní delikty a dodržování pravidel spravedlivého procesu, Správne delikty a správne trestanie v stredoeurópskom právnom priestore – súčasnosť a vízie. Zborník príspevkov z odborného seminára z medzinárodnou účasťou konaného dňa 26. októbra 2010. Bratislava : Eurokódex, s.r.o., 2010, s. 74

[76] Svoboda, P. Ústavní základy správního řízení v České republice. Praha : Linde, 2007, s. 20

[77] Decision of the administrative body imposing a sanction shall be subject to the control of legality on the part of an independent, impartial and the law established by the Court.

by administrative authorities, but the dispute over the law, which results in a finding of law. The principle of general limitation clause to reinforce negative enumeration in the jurisdiction of administrative justice, which contributed to more consistent fulfillment of Art. 6 of the Convention.[78] Incompleteness of defining the scope of administrative justice as well as results from Art. 142 par. 1 of the Constitution. For this reason, the legislator should primarily focus on the treatment of that article of the Constitution.

Under the current wording of the Art. 142 par. 1 of the Constitution by courts in civil and criminal matters, courts review the legality of decisions of public authorities and the legality of decisions, actions or other actions by public authorities where required by law. If the provisions of the Administrative Jurisdiction Act included the regulation of the Act no. 99/1963 Coll. Code of Civil proceedings, as amended (the "Civil Code procedural"), which general scheme of civil proceedings, the legislature could choose a more appropriate wording such as "courts rule in civil proceedings ...." a very content to leave the matter of jurisdiction and the doctrine of the full wording of § 244 of the Civil Procedure Code. In this case, the legislature can formulate § 244 Code of Civil Procedure to extend the material on this page judicial review of decisions on administrative punishment such. "The courts not only review the legality of the decision to impose sanctions, but also its practicality and convenience."

Author's contribution, however, considers it necessary to point out the historical context of the ratification and implementation of the requirements of Art. 6 of that document to the Code of Civil Procedure. Commitment to accede to the Convention has assumed even Czechoslovak Federal Republic in 1992. Thus, 10 years passed before the Slovak Republic - as the successor state - reflected the requirements of the Convention into its legal system. The explanatory memorandum to the said amendment to the Civil Procedure Act justifies the change "issue, which is governed by the law laid down in the European Union. The Art. 6. 2 of the Treaty on European Union, which refers to the observance of fundamental human rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6 of the Convention - the right to a fair trial).[79] In fact, so nevplývala on the translation requirements of art. 6 of the Convention into Slovak legal order the legal nature of the Convention as an international treaty, but above all the political efforts of the Slovak Republic, suggests a framework of clear statement made in the Association Agreement.[80]

The issue of the status of administrative courts, said in 1999 the Constitutional Court of the Czech Republic. Formulate legal sentence, which relates to the administrative decision verifiability requirements of Art. 6 of the Convention. The Constitutional Court of the Czech Republic, where the legislation excludes certain activities

[78] Nikodým. D.: Správne súdnictvo. Právny obzor, 87, 2004, č. 6, s. 467 – 476

[79] The explanatory memorandum to the law No. 424/2002 Coll. amending and supplementing Act No. 99/1963 Coll., as amended, code of civil procedure, available at www.justice.gov.sk/kop/pk/pk090-04.rtf, 29.03.2011, 22:13.

[80] Agreement n ° 158/1997 Coll., the EUROPEAN agreement establishing an association between the European communities and their Member States, of the one part, and the Slovak Republic on the other part

from the control of the judiciary in general, the body that is affected by these activities, you may not have the right to have an independent and impartial tribunal. Body then is not a party full "fair" process, in accordance with Art. 6. 1 of the European Convention on Human Rights and Fundamental Freedoms. This condition may, in the opinion of the Constitutional Court of the Czech Republic lead to inconsistent case law, the inconsistent position of the administration, but also contrary to the requirements of state law. Finality of certain decisions can cause a denial of justice and deny constitutionally enshrined position of administrative justice.[81]

According to R. Accomplices unless the court expressed the view that it is powerless, because the law is silent, it is a clear sign that it has full jurisdiction, and that this court can not be relied on as an independent tribunal within the meaning of the Convention. R. Pomahač argues mainly constant jurisprudence of the European Court of Human Rights. Court full jurisdiction according to him should be able similarly to the administrative authority in the sense that it point by point, reconstruct and evaluate the legislation, which has considered the administrative authority. Discovery excesses court should set aside the right decision, not as illegal, but such abuse of discretion.[82]

According to E. Babiaková court has the right to moderation importance if it is desirable that the penalty imposed fulfill its educational-preventive and repressive role sanctions. Given the distance of time, the court shall review the legality of the decision, it seems expedient, the court decided instead of administration, if the administrative decision aside and the case were returned to the new procedure and decision.[83]

According to the view doctrine may be correct reasoning abused. On the other hand, the legislature is not able to predict the content of any administrative legal relations. The reasoning is therefore likely to cover incurred legal situation. Contemporary Slovak constitutional, but statutory regulation of Civil Procedure, however, lacks an explicit framework of administrative justice in the survey of discretion in matters of administrative punishment. However, the courts have explicitly enshrined right to moderation tool review administrative penalty. According to the author of the note is the importance of moderation rights court decisions in the survey proper punishment especially in the requirements of the doctrine of full jurisdiction, judicial bodies type. Review factual reasoning principle is expediency rather secondary to the requirements of the doctrine of full jurisdiction. The review reflects the role of primary principle of administrative justice by protecting individual rights. It also retains the legal independence of administrative and civil proceedings.

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81 The finding of the Constitutional Court of the Czech Republic, dated 17.03.2009, SP. zn. PL. TC 16/99

82 Machajová, J. a kol. Všeobecné správne právo. 4. Vydanie. Bratislava : Eurkódex. 2009, s. 403

83 Babiaková, E. Správne uváženie a jeho preskúmavanie správnym súdom. Aktuálne otázky správneho konania. Zborník príspevkov zo sekcie správne právo medzinárodnej vedeckej konferencie Právo ako zjednocovateľ Európy – veda a prax (21. – 23. október 2010) Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta. 2010, s. 12

Prohibition of retroactivity

The legal system is a form of regulation of social relations. In the field of public law it si governing the legal relationship between the performers of public authority and its recipients. These relationships are built on the principle of subordination. The public power has a superior position and the ability to implement a code of conduct and an authoritative decision on the status of the recipient, ie subordinate entity. These entities can be in the implementation of public relations in a flat position, especially because the executor of the implementation of laws promoting the public interest.

Public interest is a vague legal term that needs to receive a specific content within a particular legal relationship. Given the uncertainty sets executor legislation limits the scope and course of action. The subjects because their acts by interfering with the subjective sphere of individual rights. The question must be considered because of their actions in terms of the requirements of the rules enunciated in the constitutionally enshrined principle. Principles as fundamental architectural elements of government (as well as public power system operation) place particular emphasis on the material aspects of the intervention in the sphere of individual rights.[84] Material page reflects the content of the legal relationship of rights and obligations between the public authorities and the executor of the addressee. Given that the law as a system of regulation of social relations is likely to affect these relations particularly to the future, the executor of the implementation of laws principles observed temporal applicability of laws, which explore issues of retroactivity.

Types of retroactivity

The basic principle delimiting the category of law is the principle of the protection of public confidence in the law and the related principle of non-retroactivity of

[84] While specific legal rules will be applied by all or nothing, while the principles of the simultaneous use does not exclude. The contradiction of the principles is possible and when it is being taken to resolve the relative severity of each of them (e.g. the principle of legal certainty, the principle of protection of the public interest vs. the addressee of decisions of the public administration). (Skulová, S. Právní princípy dobré správy? Principy dobré správy, Sborník příspěvků přednesených na pracovní konferenci, Kancelař veřejneho ochrance prav, Masarykova univerzita, Brno: 2006, s. 61)

laws. Very valuable asset regulation is precisely the stability and predictability of the legal consequences of our action. On the other hand, "if every time their contracts at issue rely on existing law, a person should be secured against any change in legal rules, our entire legal system would ever ossify."[85]

Retroactivity jurisprudence distinguishes between true and false. False retroactivity means that the legal facts, the creation of legal relations and legal consequences that occurred before the effective date of the new law, will be assessed under the previous law. However, it takes the original material relationship continues, will be assessed after the effective date of the new law under this new law and the legal consequences of the legal relationship arising after the effective date of the new law. Right then retroactivity "includes basically two different situations", and after the first "state of the new regulation set creation (new law) relationship before its effectiveness under conditions and subsequently docked", a second "amendment may change the legal relations incurred under the old legislation, prior to the effectiveness of the new law. "[86] False retroactivity can also be defined as the application of law to the consequences arising from the situation for the former rules.[87]

In the field the Council of Europe, the principle of non-retroactivity guarantees the Art. 7 of the Convention for the protection of human rights and fundamental freedoms.[88] The requirement of non-retroactivity as a legal rule is placed within the art. 2 of the Council of Europe Committee of Ministers Recommendation No. (91) 1 on administrative penalties (hereinafter referred to as ' the recommendation ').[89] Several facts can be seen from the contents of these documents. The Strasbourg bodies' of human rights protection deal with the issues of the assessment of substantive and procedural retroactivity, especially its admissibility under the subordinate relationships from the perspective of the Convention.

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85 Fuller, L.L.: Morálka a právo, Praha , Oikoymenh, 1998, s. 60

86 Tichý, L: K časové působnosti novely občanského zákoníku, Právník, č. 12, 1984, s. 1104

87 Perlík, D.: Retroaktivita právních předpisů v komunitárním právu, Linde Praha, 2006, s. 11

88 According to Art. Paragraph 7. 1 of the Convention can not condemn anyone for any act or omission which, at the time when it was committed, was under national or international law crimes. Nor shall a heavier penalty be imposed than the one that may be imposed at the time of the offense.
Under paragraph 2 of this Article does not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

89 Recommendations in this regard provides the following rules:
a) prohibition on the imposition of administrative sanctions for offenses, which at the time it was committed, was in conflict with the law
b) no storage tighter administrative sanction for an act which, at the time it was committed, punishable by less severe penalties (even if the regulations in force at the time of imposition of sanctions permit)
c) if, after committing an administrative offense shall enter into force legislation allowing for an administrative offense impose less severe penalties, liability for an administrative offense shall be assessed according to a rule of law which is more favorable for the responsible person (Košičiarová, S. Priestupky a odporúčanie Výboru ministrov č. R. (91) 1 o správnych sankciách. Notitiae ex Academia Bratislavensi Iurisprudentiae - 3/2009, Bratislava : Bratislavská Vysoká Škola Práva, s. 34).

The same aspects of retroactivity in its decision-making activities have dealt with the European Court of Justice. Substantive rule can rarely be applied retroactively. Such retroactive application is possible only if the wording or purpose of this rule is clear that he has to have that effect. In the case of retroactive application of substantive rules must also be the principles of legal certainty and protection of legitimate expectations.[90]

Procesnoprávna ex post facto law is in principle admissible. Art. 7 of the Convention, in view of the non-retroactivity apply only to the application of the substantive standards, not even procedural.[91] Also according to settled case-law of the ECJ "are generally applicable to all procedural rules disputes pending at the time of entry into force of these regulations, apart from the substantive rules which, as a rule, be read so that they do not apply to the facts existing prior to the entry into force.[92]

The principle of non-retroactivity is its constitutional expression in art. 1. 1 of the Constitution of the Slovak Republic No. 460/1992 Coll. (hereinafter referred to as "the Constitution of the Slovak Republic").[93] That provision refers to the Slovak Republic for the rule of law. Maintaining the principle of non-retroactivity is based on the requirements of the material rule of law. The principle includes the doctrine to the so called. on the "General" principle applicable regardless of the law, which implements the legal relationship. The rule of law is excluded, so that the public authorities create the conditions restricting availability through acts of executor of the right conferred by the Constitution, by law or generally binding legislation.[94] Enforcement of public authority cannot grant the code retroactive effect, if by the Act the person out from under the protection of the Constitution or law enforcement has ruled out a private international treaty guaranteed rights or freedoms. Retroactivity in criminal law provides in art. 50. 6 of the Constitution of the SR.[95]

The application of the principle of non-retroactivity and the principle so expressed a measure of legitimate expectations through consistency of practice and

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90 See in: Opinion of Advocate General Eleanor Sharpston raised by 25th September 2008 in Hamburg Hauptzollamt case against Joseph Jonas Vosding Schlacht, Zerlegebetrieb und Kühl GmbH & Co. KG., Vion Trading GmbH and ZeFuFleischhandel GmbH, sp. no. C 278/07, C 279/07 and C 280/07, for a preliminary ruling from the Bundesfinanzhof (Superior Federal Finance Court) in Germany.

91 Svák, J. Ochrana ľudských práv (z pohľadu judikatúry a doktríny štrasburských orgánov ochrany práva). II. rozšírené vydanie. Žilina : Eurokódex, s.r.o., 2006, s. 532

92 See in: Opinion of Advocate General Eleanor Sharpston raised by 25th September 2008 in Hamburg Hauptzollamt case against Joseph Jonas Vosding Schlacht, Zerlegebetrieb und Kühl GmbH & Co. KG., Vion Trading GmbH and ZeFuFleischhandel GmbH, sp. no. C 278/07, C 279/07 and C 280/07, for a preliminary ruling from the Bundesfinanzhof (Superior Federal Finance Court) in Germany.

93 The Slovak Republic is a sovereign, democratic and legal State. Not bind to any ideology or religion.

94 DRGONEC, J.: Súdna tvorba práva ako prostriedok uplatnenia zákona, zabezpečenia spravodlivosti a právnej istoty. Justičná revue, 60, 2008, č. 5, s. 711 – 727.

95 Punishment of an offence shall be considered and the penalty is imposed according to the law effective at the time it was committed. Later, the law will be used, if this is more favourable for the offender.

decision making requirements for the activities of public authorities.[96] Use of retroactivity may therefore interfere with the existing decision-making practice exercise public authority. By paper therefore intends to focus on the consequences of retroactivity decision-making activities in these subjects, and with proper punishment.

View of administrative justice to the principle of non-retroactivity

Prohibition of retroactive punishment when properly dealt with by the Supreme Court of the Slovak Republic (hereinafter referred to as the "Supreme Court") in the proceedings no. 5Sž/20/2010. The Supreme Court is proceeding under Article 46. 2 of the Constitution when reviewing the legality of decisions of public authorities responsible for ensuring that examine the legality of the penalty imposed on the principles of substantive law.[97]

In that case, the Supreme Court reviewed the legality of the procedure of the Council for broadcasting and retransmission (hereinafter referred to as "the Council"). In its decision the Supreme Court refers to two decisions of the Council. The first in case no RP/3/2010 of January 12th 2009, for a violation of the Act to the applicant, the Council imposed a fine of eur 3.320 and 670 euros. The decision was a judgment of the Supreme Court, no k. 3Sž/6/2010-27 of 13. May 2010 cancelled under the Art. 250l. 4 of the Act No. 99/1963 Coll.[98] in conjunction with the Art. 250j. 2 point a). and e) of the Act no. 99/1963 Coll.[99] and the matter was returned to the Board for further proceedings on grounds of error of law, if the application of the facts the defendant should apply Act No. 308/2000 Coll., as amended, effective at the time when the Act was under consideration, i.e. the date 26.09.2009. The Council has decided by decision No RP in re/44/2010 dated May 14. September 30, 2010 and being bound

[96] Dienstbier, F. Zásada legitimního očekávání v činnosti veřejné správy, Principy dobré správy, Sborník příspěvků přednesených na pracovní konferenci, Kancelař veřejneho ochrance prav, Masarykova univerzita, Brno: 2006, s. 111 - 115

[97] See: the judgment of the Supreme Court of the Slovak Republic, SP. zn. 5Sž/20/2010, dated

[98] Unless otherwise provided in this title, the provisions of the second paragraph, mutatis mutandis, with the exception of the head, the applicant must be represented by a lawyer with 250a (does not have a law degree, either by himself or his staff member (member), which will take place in court; it does not apply in cases in which the jurisdiction of the District Court, or in the case of review of a decision and the procedure in matters of health insurance, social security including sickness insurance, pension security, State social benefits, social assistance and unemployment insurance, active labour market policies and the guarantee fund, the provision of health care, in cases of offences and matters of asylum and subsidiary protection status).

[99] The Court will annul the contested decision of the administrative body, and according to the circumstances and the decision of the administrative authority of first instance and return the matter for further proceedings if the defendant administration following a review of the decision and the procedure of the administrative body within the confines of the action came to the conclusion that, in the proceedings of the administrative body has been detected such defect, which may affect the legality of the contested decision.

by the legal opinion of the Supreme Court (§ 250r CCP[100]), the procedure in question has used the Act No. 308/2000 Coll. effective at the time of the transmission of the programme in question, i.e. on 26. September 2009, to which the claimant has imposed a fine of eur 3.320, for breach of the obligations provided for in § 20 (1). 3 of Act No. 308/2000 Coll.[101] and a fine amounting to 670 euros for breach of the obligation provided for in § 20 (1). 4 Act No. 308/2000 Coll.[102]. The complainant filed the appeal argued that the contested decision the Council has used the law, which was at the time the decision ineffective.

To remedy the plaintiff took the Supreme Court the following opinion. First derive their power from the Art. 250i. 2 of the Act no. 99/1963 Coll.[103] Provision cited by the court effective transposition of the requirements of "full jurisdiction" as an attribute of the right to a fair trial. Imposed a penalty on the plaintiff under the Art. 67 par. 3 point. c) of the Act no. 208/2000 Coll. This provision, in conjunction with the Art. 20. 4 of the Act no. 208/2000 Coll. creating facts administrative offense, under which it is possible to save the broadcaster of television program services ranging from 663 to 66.387 Eur. However, the legislature by law no. 498/2009 Coll effective on the date 15.12.2009 has amended the Art. 67 par. 3 point. c) of the Act no. 308/2000 Coll. and to put an obligation under the provisions of the Art. 20. 4 of the Act no. 308/2008 Coll., i. e. obligation to implement and enforce the protection of minors in broadcasting uniform labeling system established under special legislation (hereinafter referred to as "uniform labeling system"). While the Council imposed a fine of plaintiff under the law of the day May 13th 2010 at the 26th offense was committed September 2009. Administration has imposed a sanction for plaintiff infringement by his legal rights at the time of committing the act did not impose.

Referring to the guarantee contained in Art. 6 and 7 of the Convention principles and recommendations of the Committee of Ministers of the Council of Europe. (91) 1, the Supreme Court noted that the proceedings of the Council did not support the law. Council gives retroactive effect to the substantive rules, which at the material time there. Its decision to the Supreme Court established the principle of substantive law expressed in Art. 1 Par. 1. of the Constitution. Given the nature of the proper punishment is approaching the nature of criminal prosecution while the Supreme

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100 If the Court revokes the decision of the administrative body, is bound by the legal opinion of the Court of the administrative authority for the new hearing.

101 Programs or other components of the programme service, which could jeopardise the physical, mental or moral development of minors or disturb their mental health and emotional status, may not be broadcast between 6.00 h to 22.00 h.

102 On the basis of the classification of programmes according to age appropriateness are broadcasters of television programme service and provider of on-demand audiovisual media service are required to establish and apply a uniform marking system for the protection of minors set up under special predpisu28a) (hereinafter referred to as „a unified system of labelling").

103 If the administrative authority according to a special law concerning the dispute or on another legal case decided under civil, family, labour and business relations (section 7 (1)) or decided to impose the sanctions, this decision is not binding on the Court in reviewing the facts identified administrative authority. The Court may be based on the facts of the administrative body, to carry out evidence already carried out by the administrative authorities or to the taking of evidence according to the third part of the second head.

Court justified its legal opinion Art. 50. 6 of the Constitution[104] that can be appropriately applied to administrative punishment. The decision responds to other defects of the proceedings. The perspective and the interest of the author, however, focused primarily on the requirement of the principle of non-retroactivity.

Non-retroactivity is a consequence of the principle of the rule of law. It gives us the answer to the question of liability and punishment to the body.[105] Access to the institution of the Council of Europe and the European Union is clear as to the denial of substantive retroactivity. Conversely procedural retroactivity is permissible in principle, and it does not even Convention.

In common-law countries, the principle of non-retroactivity as to the terms of legislation is not an issue. What is different is the position of justice creating the law. Capability "construct a" criminal or administrative offense[106] bring always carries a hint of retroactive application.[107] The Convention allows establishing responsibility for an offense arising out of judicial precedent. On the other hand, this approach is not feasible in central Europe. The role of the courts is especially scrutinizing the effect of the time rule.

Súdna case law and legal doctrine implies the principle of non-retroactivity of the principle of substantive law. In case the executor of a public authority (a special court) finds retroactive rule is applied according to the author of the note in the first place bound constitutionally entrenched rules of substantive law. That is, the effect would be rejected because its decision would not support the Constitution.

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104 Punishment of an offence shall be considered and the penalty is imposed according to the law effective at the time it was committed. Later, the law will be used, if this is more favourable for the offender.

105 Hall, J. General Principles of Criminal Law, 2. ed.. New Jersey : The Law Book Exchange Ltd., 2005, s. 64

106 See also the case of ´ Carroll c. United Kingdom

107 Haveman, R. – Kavran, O. – Nicols, J. Supranational Criminal Law: A System Siu Generis. Antwerp – Oxford – New York : Intersentia, 2003 s. 44

The Rule "in dubio pro reo" within the administrative punishment

The rules of procedure as the leading legal ideas fundamentally affect the course and outcome of the procedure. They summarize the common features of the various procedural Institute. Principles define and guarantee fundamental rights and duties of the subjects of the proceedings. Procedural rules therefore enshrine a range of legal rights and obligations specified range of subject's procedure. In relation to the accused expressed mainly guarantee his procedural rights. Conversely, in relation to a public performer can anchor the procedural obligation. Breach of the principle is thus a violation of a procedural requirement may constitute an objective reason for the admissibility of an appeal against a decision of guilt.

The Slovak Republic is in accordance with the Art. 1 Par. 1. of the Constitutional Act No. 460/1992 Coll. Constitution of the Slovak Republic, a sovereign, democratic state and state of the rule of law. It is not bound by any ideology or religion. In accordance with Art. 2. 2 of the Constitution state bodies can act only on the basis of the Constitution, within its limits, and to the extent and in the manner provided by law. Principles of action reflects the constitutional requirements for a range of action of the public authorities.

Show the nature of legal principles and trends specific area of social relations. The coverage of these social relations can be divided into the general principle of (the principle of legality and the principle of legitimacy, the principle of legal certainty and the principle of the right to a fair trial and so on.), Affecting a total area of law and principles of the sector, related to the specific legal industry.[108]

Its significance only individual principles do not show in the final decision, but within each procedural act and to create any procedural decision. Some of the principles are determined by the Constitution, the Charter of Fundamental Rights and Freedoms and as the Convention for the Protection of Human Rights and Fundamental Freedoms. The actual legal principles, which indicate the nature and character of the process, are as later concretized basic principles of action.[109]

In accordance with Art. 46. 1 of the Constitution, each claiming the procedures laid down by his right to an independent and impartial court in cases provided by law, another body of the Slovak Republic. The right to judicial and other legal protection guaranteed by the parties entitled to the due and lawful process. This requirement reflects on matters of criminal and administrative legal recourse safeguards

[108] Vaculíková, N.: Aplikácia práva a právne princípy. In: Právny obzor. c.3/2003, s. 276

[109] Císařová ,D. a kolektív: Trestní právo procesní, Linde, Praha,2002, str.52, ISBN: 80- 7201-374

the right to a fair trial, according to Art. 6. 1 of the European Convention on Human Rights and Fundamental Freedoms (the "Convention")[110] Strasbourg organs mainly applied protection law.

The content of the right to judicial protection, the right to the court, which is competent to correct the violation of the right based on the law. In this case we can see a breakthrough in that court is obliged to protect all the rights forming the law, including human rights under the Convention.[111] The requirement of judicial protection in the Slovak context follows Art. 50. 1 of the Constitution, according to which only the court decides on guilt and punishment for criminal offenses.

The inclusion of the circuit criminal case under the protection of the Convention is therefore consistent with its contextual requirements. In the case of administrative legal punishment Strasbourg authorities to ensure protection of rights guarantees the right to a fair trial application of the doctrine of full jurisdiction, judicial bodies type. The application of safeguards the right to a fair trial with proper punishment is justified because the plane judicial review of the decisions of government. Within the administrative proceeding these requests expresse primarily the recommendations of the Committee of Ministers of the Council of Europe.

Recommendations are not, for members of the Council of Europe binding documents, but the Committee may, if necessary, ask the state governments to inform it of the steps taken in connection therewith. Recommendations of the Committee of Ministers include the theory of the so-called international law the Rules of "soft law". They have no legal force and lack continuity with the Institute of international legal responsibility.[112] Given the differences in the application of the right to a fair trial, in particular the rule of protection safeguards in the doubts in favour of the accused, the author decided to elaborate the issue of referátu in the plane of the criminal proceedings and in the plane of the administrative procedure.

The requirements for modification of the course of criminal proceedings

[110] Within the meaning of art. 6 (1). 1 of the Convention has every right to fair, publicly and in a reasonable time, impartial tribunal previously established by law, which shall decide on its civil rights or obligations or of any criminal charge against him. Judgment shall be pronounced publicly but the press and public may be excluded from the whole or part of the trial in the interests of morals, public order or national security in a democratic society, or when the interests of the minor so require, or the protection of the private life of the parties or, to the extent necessary, the opinion of the Court base entirely due to special circumstances could be detrimental to the interests of the society.

[111] Svák, J. Ochrana ľudských práv (z pohľadu judikatúry a doktríny štrasburských orgánov ochrany práva). II. rozšírené vydanie. Žilina : Eurokódex, s.r.o., 2006, s. 337

[112] Košičiarová, S. Priestupky a odporúčanie Výboru ministrov č. R. (91) 1 o správnych sankciách. Notitiae ex Academia Bratislavensi Iurisprudentiae - 3/2009, Bratislava : Bratislavská Vysoká Škola Práva, s. 32-33

The rule in dubio pro reo can found its expression in the Art. 2. 10 (especially in its first sentence) of the Act No. 301/2005 Coll. Code of criminal proceedings.[113] The author wants to focus his attention primarily on the concept of reasonable doubt. In addition to the question of legality should control each procedural step. Doubt contrasts with the subjective belief of a body active in criminal proceedings the guilt of the accused. Controlled trial evidence and finds its expression in the grounds of the decision in the main proceedings or procedural decisions. Within any interference with the rights and freedoms of the accused should therefore be removed uncertainty, respectively considered sufficient justification for interference with the rights of the accused should prevail over doubt. Gauges remove doubts expressed by the legislature in particular the principle of legality, the principle findings of fact beyond reasonable doubt, and the principle of free evaluation of evidence.

From the systematic point of view this rule primarily expresses the rule that guarantees the presumption of innocence.[114] Expression of doubt as a gauge for guilt as part of the basic principles of the code of criminal procedure had underlined in the proceedings.[115] Decision-making, the European Court of Human Rights is primarily intended to protect the presumption of innocence contained in Art. 6. 2 of the Convention. The legal theory of the guarantee in question is divided into the following rules:

- Unproved guilt has the same effect as proven innocent,
- The accused is not required to prove his innocence,
- The doubt in favor of the accused.

These correlations highlight the different perceptions safeguards the right to a fair trial at the Council of Europe and at the level of national law. Common denominator of these approaches to the problem expresses particular judicial interpretation of national legislation.

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[113] Within the meaning of that provision referred to the law enforcement authorities in order to be found by the facts of the case, about which doubts are unfounded, and that to the extent necessary for their decision. Evidence cater to ex officio. They also have the right to procure evidence. The law enforcement authorities to clarify the circumstances of the collection of evidence against the accused, with the same degree of care as well as circumstances which bear witness in his favor, and in either direction is carried out by the evidence so as to enable the Court a fair decision.

[114] Within the meaning of section 2 (2). 4 of the code of criminal procedure, anyone against whom criminal proceedings, it shall be deemed innocent until proved guilty, leading until the Court withholds its rightful convictions of his guilt.

[115] Content classification follows the principle of the presumption of innocence of the doctrine of protection of the Strasbourg organs. In terms of interpretation, it is primarily:
- The burden of proof, which assumes the charge,
- In principle dubio pro reo (the doubt in favor of the accused);
- Legal use of legal and factual presumption,
- Inadmissibility of illegally obtained evidence
- The right not to incriminate himself,
(Svák, J. Ochrana ľudských práv (z pohľadu judikatúry a doktríny štrasburských orgánov ochrany práva). II. rozšírené vydanie. Žilina : Eurokódex, s.r.o., 2006, s. 519)

Procedural decisions of criminal courts

According to received opinion, the jurisprudence of the process governing the decision process and the conduct of the proceedings. The purpose o f the procedural decisions is to ensure that the proceedings have reached its aim. In the case of criminal proceedings such a procedural decision is the decision on a detention, respectively. He did not take the accused into custody.

Apart from a pre-extradition detention provided for in the Art. 15 and 17 of Act no. 403/2004 Coll. on the European arrest warrant and on amendments to certain laws provides grounds for detention are exhaustively the Art. 71 of the Code of Criminal Proceedings. Current legislation distinguishes bond Escape, collusive and preventive[116]. The legislature application constructs this institute again in relation to the concept of uncertainty. In accordance with the statutory text of § 71 of Criminal Procedure, the authorities prosecuting remove doubt and sufficient reasons to remand the accused in custody. Such decisions are not law enforcement proceedings and claim the custody decision is solely at the discretion of the ICC. Account limits defined by law, and the relationship formal indictment, the prosecution and the soundness of their relationship to the facts of the case.

The Court therefore finds that the material and formal conditions for the decision of custody, thus bringing charges, the validity, relationship to the facts and then, if the specific facts of any apparent binding reasons.[117]

In its discretion, the court examines only the merits of the decision on custody does not address itself to the question of guilt, because it violated the principle of presumption of innocence. Into account Court remanded the accused in custody a procedural page limits the presumption of innocence, in respect of legal rules of evidence, which should be such that the court determine the guilt of the accused and fairly under the law.[118] Binding is not a penalty, but locking character.

The question is well substantiated finding of the accused remanded in custody to deal with the European Court of Human Rights, for instance Capaeau c. Belgium

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[116] According to § 71 paragraph. 1 of the Criminal Procedure may be accused remanded in custody only if the facts so far suggest that the act for which the prosecution was initiated, it was committed, the elements of an offense, there are reasons to suspect that the accused committed the act and its proceedings or other specific facts show reason to believe that
a) escape or hide in order to avoid prosecution or punishment, especially if you can not immediately find his identity, if he has no permanent residence or where he may be a high penalty
b) act to witnesses, experts, co-accused or otherwise obstruct the investigation of facts relevant to the prosecution or
c) will continue the crime, will perfect the offense of the attempted or carried out the offense, had prepared or threatened.
In addition to these reasons, the legislature defined in § 71 paragraph. 3 of the Criminal Procedure re-bond, which built on character grounds under threat of re § 71 paragraph. 1 Criminal Procedure.

[117] Order of the District Court of Pezinok, SP. zn. Tp 14/2010, dated June 24, 2010

[118] Svák, J. Ochrana ľudských práv (z pohľadu judikatúry a doktríny štrasburských orgánov ochrany práva). II. rozšírené vydanie. Žilina : Eurokódex, s.r.o., 2006, s. 511

(judgment of 13 January 2005 relating to the complaint. 42914/98). The complainant demanded his right to compensation for unlawful detention. His request on an unlawful detention was rejected by the Belgian Minister of Justice and subsequently by the commission for the appeals. Its decision, the Belgian authorities have established the fact that the victim did not provide any evidence of his innocence.[119]

On the contrary, the complainant argued by editing the article 6. 1 of the Convention.[120] The statutory requirement of the Belgian law on the taking of evidence of their innocence to those accused would be inconsistent with the presumption of innocence by editing under the Convention. The arguments of the complainant, he agreed, the European Court of human rights.[121]

Authority of law enforcement must therefore reason enough to prove detention. For example, collusive bond can only justify certain evidentiary or procedural situation, so for example the fact that the accused denies committing the offense or that the case terminated in favor of the accused person, whose testimony is in the stage in conflict with other documented evidence, respectively if all the witnesses have not yet been heard in the matter, but there must be other not general, but specific evidence to justify fears of collusion proceedings the accused. Institute of custody is one of the most important interventions in fundamental human rights and freedoms, which is not yet finally decided on the guilt of the accused and strikes the right to presumption of innocence.[122]

Requirements of the Recommendations of the Committee of Ministers on the administrative punishment in Slovakia

Sphere proper punishment affects a wide range of social relationships. Proper disciplinary offenses (excluding penalty interest in the government), good public order offenses, misdemeanors and other administrative offenses classified the Strasbourg case-law protection authorities under the term criminal charge within the meaning of Art. 6. 1 of the Convention. Plane itself interfere with administrative proceedings

[119] A similar situation has dealt with the European Court of human rights in the case of the Netherlands, decision of 28 Bars (c). October 2003 to complaint No. 44320/98. The complainant in these proceedings to seek compensation for expenses incurred during criminal proceedings obvinému. The prosecution was not completed by decision in the main proceedings, in view of its Statute of limitations. The national authorities have violated art. 6 (1). 2 claims on which rejected an application for reimbursement of expenses sťažovateľovu. The courts here have taken into account in determining the guilt of the accused, which has not been proven.

[120] Under art. 6 (1). 2, of the Convention, every person who is charged with a criminal offence shall be considered innocent until his guilt has not been proven lawfully.

[121] Capeau v. Belgium, 2005-I, Netherlands Institute of Human Rights, Utrecht school of law, dostupné na: http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/1d4d0dd240bfee7ec12568490035df05/87be7a45e861f9dfc1256f85003411b7?OpenDocument, 15.03.2011, 21:35 hod.

[122] Order of the District Court of Pezinok, SP. zn. Tp 14/2010, dated June 24, 2010

before the requirements of the resolutions and recommendations of the Committee of Ministers of the Council of Europe.

The basic document in this area is the resolution of the Committee of Ministers of the Council of Europe. (77) 31 on the protection of individuals with regard to the decisions of public authorities. Significant importance is the recommendation of the Committee of Ministers. (80) 2 on good reasoning.

The content follows the recommendation of the Committee of Ministers. (91) 1 on administrative sanctions (the "Recommendation of the Committee of Ministers (91) 1). It focuses on the procedural arrangements Relations correct punishment. In its scope, however, exempts actions taken by public authorities in connection with criminal proceedings and disciplinary sanctions.[123] Recommendation of the Committee of Ministers (91) 1 does not directly rule requirements of the doubt in favor of the accused. Requirement of the rule indirectly suggest the following principles:

- The principle of legality
- The principle obligation of proof lies with the administrative authority

The principle of legality

The essence of the right to a fair trial guarantees and maintains the legal requirements in the course of proceedings before a public authority. The concept of procedural fairness is based on a normative, positivist idea that is just what is legal. Justice itself closer we express in particular through the legal safeguards provided for in the procedural laws.[124]

The principle of legality is an essential part of controlling public administration. Art. 1 and Art. 2. 2 of the Constitution sets out the fundamental guarantee of legality in public administration. In the substantive legality of the plane requires precise demarcation of administrative liability. The legislation has addressed government to clearly define the offense, beyond administrative responsibility in relation to legal

[123] Disciplinary penalties within the meaning of the case-law of the European Court for the Government in human rights before the nature of the civil law or liability under art. 6 (1). 1 of the Convention. However, according to the author's specific situation regulated by law No. 73/1998 Coll. on State service of members of the police corps, Slovak information service, the Corps of the prison and judicial guard of the Slovak Republic and the railway police. Within the meaning of article 52 (1). 2 under this Act shall be heard in the proceedings, law enforcement officers, which shows signs of infraction. The author is of the opinion that in the case of an offence may be subject to the requirements of the procedure the police proceedings in Recommendation No. (91) 1. Vylučenie proceedings of the infraction from the protection of the characters having recommendations would, in the opinion of the author has been at odds with the protection of the rights of the individual to the Strasbourg authorities, protection of the rights linked to the context.

[124] Pouperová, O. Čl. 6 Úmluvy a správní řízení. Vliv EÚ a Rady Európy na správní řízení v ČR a v Polsku. Brno: Tribun EU, 2010 s. 21

liability under other areas of law. The principle of legality requires for strict compliance with procedural rules.

According to the Art. 1 of the Recommendations of the Committee of Ministers. (91) 1 administrative sanctions be imposed and the terms of their performance must be based law (laid down by law). Document creators had in mind the existence of a legal basis for the application of administrative sanctions. The penalty must be supported by law. Otherwise, it was a founding excess objective ground of appeal against the decision. In accordance with the Art. no. 51 of Act No. 372/1990 Coll. of offenses (the "Infraction Act") unless this or another Act provides otherwise, the procedure for misdemeanors general rules of administrative procedure. As Infraction Act does not contain a separate treatment principles of action and treatment decisions in question relate to the requirements of the provisions of Act no. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Act).[125] If we give the principle of legality in relation to the principle of presumption of innocence, it can be argued that what is legal is also no doubt? We believe that if the administrative procedure that controls the principle of material truth, we doubt the relationship rules in favor of the accused and the principle of legality to express in this way.

The issue of administrative offenses is not only in Slovakia but also in the Czech Republic, often subject to a decision of administrative justice. Even in the Czech Republic has not yet adopted the Law on Administrative Punishment.[126] The Supreme Administrative Court of the CZECH REPUBLIC the Senate expanded January 15th 2008 under no. 4/2006-73 to 2A with similarly as the Senate of the Supreme Court of the SLOVAK REPUBLIC[127] in its resolution, the operative part of the decision judikoval zovšeobecňovacom the correct/delict - must contain a description of the Act, indicating the place, time and manner of committing, or even putting the other facts that are necessary to make the deed could not be confused with another in deed.[128]

Principle – onus of proof lies on the administrative authority

[125] Within the meaning of section 3 (1). 1 administrative procedure referred to the authorities in the proceedings in accordance with the srávne laws and regulations. They are obliged to protect the interests of the State and society, the rights and interests of natural persons and legal entities and consistently require the performance of their duties. Within the meaning of section 46 administrative policy decision must be in accordance with the laws and other legal provisions, it must be issued to the competent authority, must be based on the reliably detected cases and must contain the prescribed particulars.

[126] A draft of the law on administrative punishment of the intention was in the Czech Republic approved by resolution of the Government of the Czech Republic dated 20.02.2008 162

[127] According to the judgment of the Supreme Court of the Slovak Republic, SP. zn. 2 Sžo 106/2007 must delineate the scope of the operative part of the decision on the right of the administrative tort/delict - consist in the specification, so that the procedure was not sanctioned by the interchangeable in the other.

[128] Identification of the work of administrative misconduct. From the judicial practice 57/2008, 08: 49 CT572, 21.03.2011, ASPI: 57

According to the Art. 7 of the Recommendations of the Committee of Ministers. (91) 1 has the burden of proof burden on the administration. Guilt of the accused subject of an administrative offense must therefore demonstrate the administration. Hand in hand with this principle, it is explicitly expressed in another Article 6. 2 of the Convention, according to which anyone who has been charged with a criminal offense shall be presumed innocent until proved guilty according to law (the principle of presumption of innocence).[129]

Problem editing administrative punishment in the Slovak Republic is its fragmentation. A relatively comprehensive procedural treatment contains only the criminal law. Procedural aspects of the penalties for other administrative delicts, mere administrative offences lays down an administrative order which expressly correctly itself does not establish the position of the accused. According to the majority of the administrative offences Act is a powder on criminal charges within the meaning of art. 6. 1 of the Convention and the protection of rights must be subject to guarantees to it to a fair trial.[130] On the contrary, according to Pouperovej it is not possible to apply the guarantees under art. 6. 1 of the Convention in its entirety to the decision-making body of the public administration.[131]

The issue of application protection guarantees the right to a fair trial in administrative legal recourse for decisions of public authorities; the author is inclined to believe rather Pouperovej. It should be noted, however, that as Powder correctly indicated the position of the accused in the correct punishment Slovak legislation does not proceed uniformly. The actual recommendation of the Committee of Ministers (91) 1 does not apply to all types of administrative sanctions.

In the prosecution for offenses regulate the procedure Infraction Act. The survey documents for a decision included in pre-trial phase of the proceedings – i. e. detecting violations. As for the other penalties for administrative offenses the detection of evidence as part of the detection of the grounds fr the decision in the Administrative proceedings is rule by the Art. 32 et seq.

According to the decision of the Supreme Administrative Court no. 4 As 10/2006-57, the proceedings for the offense, as well as a procedure for administrative offenses are a subject to an identical procedural regulation. Applying this view, however, in the opinion of the author fault detection problem (removal of doubt it) a different approach Criminal Procedure Code and the Administrative Code. With PPC builds remove doubt of the guilt of the accused to a formal principle in the correct order the legislature retained material approach to collecting materials for a decision.

Ingestion principles of the doubt in favor of the accused comes into play only when doubts arose in criminal proceedings for investigating the facts, and insist

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129 Košičiarová, S. Priestupky a odporúčanie Výboru ministrov č. R. (91) 1 o správnych sankciách. Notitiae ex Academia Bratislavensi Iurisprudentiae - 3/2009, Bratislava : Bratislavská Vysoká Škola Práva, s. 35 - 36

130 K tomu pozri: Prášková, H. Postavení obviněného v řízení o správních deliktech (Vybrané problémy). Aktuálne otázky správneho konania. Zborník príspevkov zo sekcie správne právo medzinárodnej vedeckej konferencie PRÁVO AKO ZJEDNOCOVATEĽ EURÓPY – VEDA A PRAX (21. -23. október 2010), Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, 2010, s. 108

131 Pouperová, O. Čl. 6 Úmluvy a správní řízení. Vliv EÚ a Rady Európy na správní řízení v ČR a v Polsku. Brno: Tribun EU, 2010 s. 26

upon the execution and evaluation of all available evidence, that may actually contribute to a proper finding of fact, to the extent necessary the objective, the law of the case and the corresponding fair decision.[132] However, the primary duty of the authorities of the criminal proceedings and of the court is to reason any interference with the rights and freedoms of the accused and the timing of the need to examine the duration of the intervention.

The Slovak legislation administrative legal prosecution lacks a coherent approach to finding of guilt without doubt. Several authors believes need of law enforcement standards for proper conduct. The key to resolving issues of access to proof of guilt in administrative proceedings may itself approach the Strasbourg organs protection law, which included disciplinary actions in self-interest within the scope of civil rights and obligations under Art. 6. 1 of the Convention and the rest of their proceedings assigned to administrative offenses of criminal charges under Art. 6. 1 of the Convention. The position of the Strasbourg protection authorities would, in the opinion of the author could translate into a uniform code of good punishment.

[132] Judgment of the Supreme Court of the Slovak Republic, 25. February 1997, SP. zn, Te 6 1/97

Principle non bis in idem

Name of the paper suggests the intention of the author to deal with the guarantee of protection of the right to a fair trial "not twice for the same thing." The warranty has a wide dimension and jurisprudence in general; it can be seen looking a number of sectors, respectively. legal disciplines.

Firstly, however, it has international legal character, in our region the legal anchoring of this rule resulted mainly in the fields covered by the Strasbourg organs protection law. The States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") did not based the rule in the text of the Convention at its formation in 1950. The warranty has found its expression in the Additional Protocol no. 7 (hereinafter referred to as "the Protocol") to the Convention. According to the Art. 4 of Protocol No one shall be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offense for which has already been acquitted or convicted by a final judgment in accordance with the law and penal procedure of that State. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with law and penal procedure of the State concerned, or if new facts or novoodhalené fundamental defect in the previous proceedings, which could affect the outcome of the case.

Of this Article shall be made under Article 15 of the Convention.

In the first paragraph of this article, the application of this principle is limited to national jurisdiction, which means that the law prohibits punishing the offender for the same offense twice the competent authorities. Such wording therefore does not require Member States of the Council of Europe to respect this principle, even if the offender has been convicted of the same offense in another state.[133]

How then to suggest more of the authors of the application of this rule is his respect for the cross-border problems. J. A. E. Vervaele points out that the "ne bis in idem" is a general principle of criminal law in many legal systems. In some modifications based as constitutionally guaranteed right. Historically, the principle developed as a rule with a limited range of application of the national legislation and criminal justice. With regard to the content of the principle of jurisprudence has traditionally distinguishes between the rules "no one should be tried twice for the

[133] Svák, J. Ochrana ľudských práv (z pohľadu judikatúry a doktríny štrasburských orgánov ochrany práv). II. rozšírené vydanie. Žilina : Poradca podnikateľa, spol. s. r. o., 2006, s. 533, ISBN 80-88931-51-7

same offense" (nemo debit bis vexari et eadem for una causa), and "no one should be punished twice for the same offense" (nemo debit bis puniri for uno delicto).[134]

The same author emphasizes first national limitation of this principle, the possibility of a combination of criminal and administrative legal sanctions, punishment and judicial amicable settlement (out of court settlement) and also a different approach to the definition of a "thing" ("Idem").[135] Some member states of the Council of Europe and the European Union understand the term thing perceived formal definition of the crime, whereas others considere the substantive content of the act itself.

Slovak legislation enshrines the rule especially in the Constitution of the Slovak Republic no. 460/1992 Coll. (hereinafter referred to as "the Constitution") in Art. 50. 5, according to which no one can be prosecuted for an offense for which has already been finally convicted or acquitted. This policy does not apply extraordinary remedies in accordance with law. Legal representation is the principle stated in the Art. 2. 8 of Act no. 301/2005 Z. of. Code of Criminal Procedure (hereinafter referred to as the "Criminal Code"), under which no one can be prosecuted for an offense for which has already been finally convicted or acquitted. This policy does not apply extraordinary remedies in accordance with law.

Act in § 2. 8 used labeling act. This term "act" is broader than the term "offense" as defined in § 8 of the Act no. 300/2005 Z. of. Penal Code (hereinafter referred to as the "Criminal Code"). As for the term "action", which uses both the Criminal Code and the Criminal Procedure Code, it should be noted that the concept of action is included as action and consequence. This distinction is particularly important in determining whether it is the same the same thing or not.[136]

In addition, the legislature did not neglect to adjust the liability for offenses under the Art. 2. 1 of Act No. 372/1990 Coll. of offenses (the "Act offenses" or "Infraction Act"), under which the offense culpable conduct that violates or threatens the interest of the company and is an offense expressly designated in this or any other Act, unless the other administrative offense punishable by specific legislation, or a crime.

The regulation of the administrative offenses should be an organic follow-up to adjust the criminal courts as criminal offenses, which would consist of logical, continuous follow-up criminal and content protection and proper social relationships.[137] Otherwise, the statutory definition of the offense could also meet the requirement of the "not twice for the same thing."

The rule thus contains its national dimension, cross-content, substantive and procedural dimensions and finally reflects border criminal and administrative liability. The intention of the author of the paper is primarily directed attention to the

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134 Vervaele, J. A. E. : The transnational *ne bis in idem* principle in the EU. Mutual recognition and equivalent protection of human rights, In. Utrecht Law Review, Volume 1, Issue 2, (December) 2005, s. 100

135 Vervaele, J. A. E. : The transnational *ne bis in idem* principle in the EU. Mutual recognition and equivalent protection of human rights, In. Utrecht Law Review, Volume 1, Issue 2, (December) 2005, s. 100,

136 Ivor, J. : Trestné právo procesné, Bratislava : Iura Edition, 2008, s. 75

137 Madliak, J. – Madliak, A. : Trestné právo hmotné – všeobecná časť, I. Základy trestnej zodpovednosti, Košice: ATOM Computers, s. 111

approach of the European Court of Human Rights, the Constitutional Court of the Czech Republic and the Slovak Supreme Court of that warranty.

Approach of the European Court of human rights

The essence of the principle expresses the case-law, throughout the history of art. 4 of Protocol No 7 of the European Court of human rights (hereinafter referred to as "the Court") demonstrates the existence of a number of approaches to the question of the identity of victims in the prosecution of the complainants. The view presented in the decision in the Court of SERGEY ZOLOTUKHIN. RUSSIAN FEDERATION.[138] Complainant complained under the Art. 4 of Protocol 7 that it made an administrative penalty of detention for three days for disorderly conduct committed on 4 January 2002 and was subsequently tried for the same offense.

The facts of the case involved two allegations against the complainant. On 4 January 2002 Gribanovskiy district court acknowledged the applicant guilty of an offense under Art. 158 Law on administrative offenses.[139] The applicant was sentenced to three days of administrative detention. The decision that the applicant had not appealed against the verdict and judgment was enforceable.

Subsequently, on 23 January 2002 was the complainant against criminal prosecution by adequately reasoned conclusion of an offense under Article hooliganism set out in the article 213. 2. point. b) of the Russian Criminal Code.[140] First February 2002 the applicant was taken into custody. At the same time towards the complainant initiated two further criminal proceedings on the basis of other charges. 5th April 2002 the applicant was formally charged.

On 2 December 2002 Gribanovskiy district court delivered its judgment. As for the offense under Art. 213. 2 of the Criminal Law District Court deprived the complainant of guilt on the basis that the allegation of a crime based on the act for which the applicant was raised allegations of misconduct. The district court also recog-

138 14939/03 decision complaint No of 10. February 2009

139 The essence of the deed, which was given to the complainant in the proceedings to which the complainant had sworn was blamed in a public place and did not respond to a reprimand or admonition.

140 The complainant was on 4 January 2002 at the police station to resist public officials and disrupt public order. At the police station had to give an explanation of his conduct known Ms. P., and entered a closed military area Voronezh-45. The complainant had clearly violate public policy, expressed a clear lack of respect and ostentatiously flaunt immorality before police present. He did not respond to the legal challenges to the waiver of public nuisance. He will try to leave the premises of the service actively to resist and obstruct the proper functioning of the office. According to Russian authorities, therefore the applicant acted intentionally, expressed a clear disrespect accompanied by the threat of violence and that his actions could be judged as proceedings under Art. Paragraph 213. 2 point. b) of the Criminal Code. To the announcement made on suspicion of having committed an offense. He was then transported to the building of the District Court and during the journey the car had threatened for bringing charges of misconduct.

nized the applicant guilty of assault on a public official under Art. 319 of the Criminal Code.[141] At the same time he acknowledged the complainant's guilty of a crime under art. 318. 2. of the criminal code.[142] On 15 April 2003 Voronezh Regional Court upheld the judgment of the District Court.

The European Court of Human Rights considered the character of allegations of misconduct by the Russian national legislation classified as administrative. The Court concluded that criminal charges should be within the terms of the Convention and the Protocol.

Were the acts for which the complainant to prosecute the same (idem) ?

The Court found that when it came to statements of conviction under Art. 318 and 319 of the Penal Code, the decision was based on factual and temporal separation proceedings allegations. On the other hand, charges for disorderly conduct under Art. 213 of the Penal Code were made by the applicant on the basis of the same facts as those that form the basis for his conviction under Art. 158 Law on administrative offenses.

The Court held that a misdemeanor disorderly conduct as defined in the law on administrative offenses and the offense of disorderly conduct under Penal Code have the same basic elements, namely public disorder. The Court therefore concluded that the applicant had been prosecuted for an offense for which has already been convicted before.

Its conclusions the court examined three approaches to assessing the application of safeguards "not twice for the same thing." The first focuses on the behavior of the identity of the entity acting unlawfully, regardless of formal legal classification (idem factum). An example is the decision on the GRADINGER. AUSTRIA[143]. In this case, the applicant was prosecuted for the crime of killing a victim while the administrative proceedings for driving under the influence of alcohol. The Court found that although the signs, the nature and purpose of the two offenses were different, there has been a violation of Art. Protocol No. 4. 7, since both decisions are based on the same behavior of the complainant.

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141 The Court found that the complainant had to threaten a police officer while committing offences referred to in this communication, elaborated art. 158 and 165 of the Act on administrative delict is in his Office at the police station. The testimony by police officers for this purpose was the other statements of police officers who were present in the Office at the police station.

142 On the basis of the testimony of police officers and the testimony of the complainant's girlfriend's District Court found that the Commission of the offence, can a notice of complainant and his girlfriend were taken into a police vehicle in the car had the complainant to continue vyhrážaní and threatening a police officer to death after the release of the detencie. These threats should be considered as a real polivajt of the sťažovateľovu violent history.

143 Complaint No. 15963/90, decision dated 09.09.1994

The second approach is based on the premise that the defendant's conduct giving rise to the prosecution of the same, but the same conduct may constitute multiple offenses considered in separate proceedings. This doctrine was developed by the Court in the case OLIVEIRA. SWITZERLAND[144], in which the applicant failed to fulfill his obligation to the technical inspection of the vehicle and then of caused an injury by negligence. Her car is turned to the other side of the road and one car intervening conflicting with another car, whose driver suffered serious injuries. The Court found that the facts of the case were a typical example of a single procedure founder responsibility for several acts, as Art. 4 of Protocol 7 prohibit prosecution twice for the same offense. According to the Court, although it would be more in line with the principle of sound administration of justice, if convicted in relation to both offenses said one court in one proceeding, the fact that the two procedures were performed was not decisive. The fact that individual actions, even where they were part of the same offense, were discussed by various courts, does not create a violation of Art. Protocol No. 4. 7, in particular, when sanctions were accumulated each other. In the follow-up event in GOKTAN v. FRANCE[145] the Court also decided, pursuant to article. 4 of Protocol No 7, since one of the complainant's conduct, for which he was convicted, constituted two separate acts, and that non-payment of the fine customs and drug offense dovez. As well, the Court proceeded in cases of GAUTHIER v. FRANCE[146] and in TURKEY v. ONGUN[147].

The third approach stresses "essential elements" of the two acts. In the case of FRANZ FISCHER v. AUSTRIA [148] Court tolerated conduct prosecutions for two offenses based on one of the unlawful conduct. This procedure tolerates and Art. Protocol No. 4. 7th However, given that it would be inconsistent with this provision to prosecute or punish the complainant for offenses that were only "marginally different", the Court held that it is necessary to examine whether these actions show the same "essential elements". Even in that case, the complainant referred to conduct administrative proceedings for the offense of driving under the influence of alcohol, while the administration of criminal prosecution for the killing of negligence, and the status of the complainant expressing induced driving alone. These actions were consistent in the Court "essential elements" of how the Court also saw a contradiction with Art. Protocol No. 4. 7th

The Court emphasized that it was the two offenses for which there is no overlap in the range of insignificant, and therefore there is no reason for keeping the two cases against the complainant. According to the author the complainant could not be prosecuted separately for each offense if the act of driving the killing was part of an act of negligence. The same approach was followed by decision-making of the

144 Complaint No 25711/94, decision dated 30.07.1998

145 Complaint No. 33402/96, Judgment of 02. July 2002

146 Complaint No. 61178/00, decision of the day 24. June 2003

147 Complaint No. 15737/02, Decision dated May 10. October 2006

148 Complaint No. 37950/97, decision dated 29. May 2001

Court in the case of W. F. v. AUSTRIA[149] and SAILER v. AUSTRIA[150], because both cases were based on factually identical conditions.

What the Court actually wanted those approaches to solving the problem say? A key issue is the interpretation of the term "offense" in Art. Protocol No. 4. 7th The application of this concept in the context of the provisions of the Protocol can not justify a tendency to a restrictive approach. The rule stresses that the Convention must be interpreted and applied in such a way that the rights enshrined implemented practically and efficiently, not theoretical and illusory.

Approach the Constitutional Court of the Czech Republic.

The basic law in the constitutional order of the Czech Republic is the Constitutional Act. 1/1993 Coll. as amended by Act no. 347/1997 Coll. 300/2000 Coll. 448/2001 Coll. 395/2001 Coll. 515/2002 Coll. and 319/2009 Sb (hereinafter referred to as the "Constitution of the Czech Republic"). According to Art. 3 of the Constitution of the Czech Republic part of the constitutional order of the Czech Republic is the Charter of Rights and Freedoms. Constitutional Act no. 2/1993 Coll. as amended by Act no. 162/1998 Coll. (Hereinafter referred to as the "Charter of Fundamental Rights and Freedoms") provides protection guarantee of the right to a fair trial in Article 40. 5, according to which no one can be prosecuted for an offense for which has already been convicted or acquitted. This policy does not preclude the use of extraordinary remedies in accordance with law. The wording of the principle expresses the formulation of the Art. 50. 5 of the Constitution, in which the Constitutional Act no. 23/1991 Coll. The Charter of Fundamental Rights and Freedoms incorporated.

Approach the Constitutional Court of the Czech Republic declares that the rich decision-making. In this part of the paper, the author decided to focus mainly on the decisions of the Czech Republic, the Constitutional Court upheld the complaints on violation of human rights.

In judgment no. I.ÚS 26/01 dated 04.07.2001, the Constitutional Court ruled on the principle of "ne bis in idem", particularly with regard to rehabilitation institute criminal proceedings. The complainant requested the Constitutional Court set aside the order of the Regional Court in Ostrava, Olomouc branch dismissing the complaint sentenced S. H. against the order of the District Court in Olomouc of 30 10th 2000, sp. no. Nt 221/2000, which dismissed the action on a permit renewal proceedings culminating in the judgment of the District Court in Olomouc of 24 8th 1993, sp. no. 5 T 62/93, as amended by resolution of the Regional Court in Ostrava, Olomouc branch, dated 20 10th 1993, sp. no. 2 To 388/93.[151]

[149] Complaint No. 38275/97 Decision from day 30. May 2002

[150] Complaint No. 38237/97 Decision of 06. June 2002

[151] Under the decision, the complainant was found guilty of a crime of avoiding enforcement of civilian service pursuant to section (2), 272d 3 of the criminal law, in such a way that the civil

In the past, the complainant was already subject of a judgment of the District Court in Olomouc, dated 7.11.1991, SP. zn. 5T 80/91, as amended by resolution of the regional court in Ostrava, dated 28.1.1992, SP. zn. 7To 561/91, for the fact that the day has left the place of civilian service without permission, 23.4.1991 for having been found guilty of a crime of avoiding enforcement of civilian service pursuant to section (2), 272d 3 of the criminal code and sentenced to imprisonment for a period of 6 months with a suspensive procedure serve his sentence at the trial for a year.[152]

The complainant testified to the fact that the application of the principle of "not twice in the same case" there is no Foundation (in view of the social conditions of the then-Czechoslovakia) of the new court practice, which should respond only to new cases, but should correct erroneous court decisions of the past.[153]

In the opinion of the Constitutional Court was obliged to apply the regional court the principle of "ne bis in idem", as it were a provision of an international treaty on human rights, which is binding for each court under art. 10 of the Constitution of the CZECH REPUBLIC and shall take precedence over the law. District Court infringed the principle of "ne bis in idem", in particular, by the fact that the legal opinion he insisted on neodôvodnenosti the motion to permit recovery. To the cancellation of the original judgment was supposed to proceed alone on its own initiative and on the basis of their own knowledge. In the opinion of the Constitutional Court in proceedings before the courts, there has been not only to the incorrect application of standards, the general criminal law, but also to direct the violation of constitutional provisions that have been required by law to respect the courts. With its conflicting proceeding did not provide sufficient protection to the complainant his rights within the meaning of art. 90 of the Constitution of the CZECH REPUBLIC.[154]

Prohibition of residence in the territory of the State

With the issue of double punishment dealt with the Constitutional Court of the CZECH REPUBLIC in its decision SP. zn. I. TC 152/97, of 14.10.1998. The complainant

service from 28. January 1992 still exists and has been sentenced to a fine in the amount of CZK 10,000.

[152] The complainant was referred to the Court of the opinion that the regional court in Ostrava, Olomouc, dismissing a complaint against decisions to refuse branch of the resolution on the proposal for a permit renewal proceedings were violated his constitutionally guaranteed rights to the art. 40 (1). 5 Charters of rights and freedoms, art. 6 (1). 1 of the Convention, art. 4 (2). 1 of Protocol No. 7 to the Convention.

[153] The courts should, according to the complainant, in the interpretation of provisions of section 278 (1), fail 1 of the code of criminal procedure. Pointing to the fact that the opinion of the Constitutional Court prehodnocujúci past legal actions was explicitly recognized as new facts in the dispute on the application for renewal of proceedings in the District Court in Hradec Kralove resolutions of 27. 10.2000, SP. zn. NT. 1711/99 and from day 15. 12.2000, SP. zn. NT. 1710/99.

[154] Courts are called especially to manner provided by law must protect the rights. Only a court decides on guilt and punishment for criminal offenses.

challenged the decision of the municipal court in Prague, which the Court rejected the complainant's claim against the decision and the procedure of the administrative body.[155]

Administrative authorities imposed an obligation to leave the decision to the complainant within the period laid down in the Czech Republic. Administrative decisions based on the ground that the applicant failed to comply with an obligation under § 22 of Act no. 123/1992 Sb., Aliens, and because the offenses committed complaining customs inspection and re-selling goods without a price indication. In that case the proper authorities impose fines paid to the complainant.

Complainant police authorities banned the stay in the Czech Republic according to Art. 14. 1 of the Act. 123/1992 Coll. because the complainant failed to comply with the obligation to respect the laws and other general regulations applicable in the Czech Republic. The offense was res judicata.

After exhausting all means of legal defense complainant filed a complaint with the Constitutional Court of the Czech Republic with reference to the violation of the principle of "ne bis in idem". Violation should be based on the applicant's repeated penalized for breach of its obligations, although for them has already been affected by the infringement procedure. This way the Czech authorities had infringed Art. 4. 1 of Protocol no. 7th

Along with the constitutional complaint filed participant, a proposal to repeal the provisions of the Act. 123/1992 Coll. concretely the text of the Art. 14. 1 of the Act. 123/1992 Coll. Based according to the complainant's view, the possibility of alien residence ban for breach of any obligation prescribed by this Act or other generally binding legal regulations. § 14. 1 of the regulation that make provision severity criteria, allowing punish illegal conduct beyond misdemeanor or criminal proceedings, and did not distinguish between the commission of the offense and the offense. That provision did not circumscribe the severity proceedings, the degree of fault and allowing double punishment for one and the same action.

The Constitutional Court of the Czech Republic finally annulled the Municipal Court in Prague for breach of Art. 38. 2 of the Charter of Fundamental Rights and Freedoms because the complainant did not have access to justice and public hearing of his case, for his personal involvement. For this reason, the objection did not double punishment.

First, it should be noted that although the complainant had pointed to guarantee "not twice for the same thing", especially indirectly challenged the legality of violation and criminal penalties under Art. 7 of the Convention. Steady decision-making of the European Court of Human Rights has an autonomous concept of legality that means the definition of criminal offenses and penalties under national or international law. Interpretation of the term includes written and unwritten law in terms of the sources of law and favors content over form expression. In terms of content then

[155] The decision of the police headquarters in the CZECH REPUBLIC, the Directorate-General of the foreign service and border police, from day 3. 4.1996, n. j. PPR-1517/RCP-c-225-96, which rejected the complainant's appeal against the decision of the police of the CZECH REPUBLIC, Department of foreign police and immigration services in Klatovech, from day 12. 2.1996, ref PZC-117/PCKT-c-96.

required to by law or judicial precedent showed signs of predictability, clarity and readability, but also availability.[156]

According to the author there is no doubt that the complainant suffered the adverse effect twice for the same conduct. Requirement guarantees "ne bis in idem" in the plane of the administrative proceedings reflects the Art. 3 of the Recommendations of the Committee of Ministers of the Council of Europe (91) 1 on administrative penalties. In response to this recommendation highlights the Committee of Ministers to Member States no. (2007) 7 on good administration demand that the government ensure quality legislation, which must be appropriate and consistent, clear and easily understandable, and accessible. The basic "cornerstone" of the two texts is the principle of legality.

Given the wide-ranging requirements of § 14 of Act no. 123/1993 Sb., The legislature has provided administrative authorities wide scope for discretion. Both recommendations emphasize the principle of legality. Compliance with the law associated with maintaining the conditions laid down by national law and international[157], or require imposition of sanctions and compliance with the conditions of administrative liability law-based drawing.[158]

According to the author would not be detrimental to the constitutionality and legality of the administration of the hearing the applicant's offenses investigated the possibility of direct referrals to the police authorities for decision according to the Art. 14. 1 of the Act. 123/1992 Sb. Police authorities in our opinion have prevented the embodiment administrative proceedings obstacle conclusive decision. Act and decided they could only meet the procedural conditions for the use of extraordinary remedies, which does not exclude the Czech Constitution, the Constitution or the Charter of Fundamental Rights and Freedoms.

Worsening the status of a complainant

The decision no. I.ÚS 565/03 dated December 12th 2005 of Czech Constitutional Court answered the question of worsening status of the applicant after application guarantees "ne bis in idem". The complainant sought the annulment of the judgment of the Supreme Administrative Court of 25 8th 2003, no. j. 2 A 1130/2002-OL-27, dismissing his complaint against the Social Security Administration (also referred to as "CSSA") of 18 6th 2002, sp. Marks. 521,004,239th ČSSZ rejected the complainant's request for a lump sum of money at the time of imprisonment from 25 to 25 10th 1984 10th 1987th

156 Svák, J. Ochrana ľudských práv (z pohľadu judikatúry a doktríny štrasburských orgánov ochrany práv). II. rozšírené vydanie. Žilina : Poradca podnikateľa, spol. s. r. o., 2006, s. 522 - 524, ISBN 80-88931-51-7

157 art. 2 (2). (2) the Committee of Ministers to the Council of Europe Member States Recommendation No (2007) 7 on good administration

158 art. 1 the Council of Europe Committee of Ministers Recommendation No. (91) 1 on administrative sanctions

The complainant was under the previous regime repeatedly persecuted. On the basis of conscientious objection and refused to serve his faith in the Czechoslovak People's Army. Judgment of the military district court in Brno dated 13.01.1982, sp. no. 4T 385/81 was sentenced to a term of imprisonment of two years. The sentence has been completed. The decision was overturned by the Higher Military Court in Olomouc judgment sp. no. 1Rtvo 9/92, dated 19.6.1992.[159] For these illegal conviction admitted CSSA to the complainant a lump sum 132.000,- CZK.[160]

In addition, the complainant was sentenced by the judgment of the Military Court in Brno from December 17th 1984 foravoiding the compulsory military service (decision no. 5T 370/84), in connection with the resolution of higher military court in Tabor from January 17th 1985 (decision no. 1To 4/85), to deprivation of liberty for a period of three years in prison, which carried out during the period from October 25th 1984 to October 25th 1987. Even that decision was repealed under the Act on judicial rehabilitácií.[161]

Minister of Justice, but in the latter case, filed a complaint for violation of the Act on the ground that after the rehabilitation proceedings remained unchanged verdict determination of the guilt complainant in breach of the principle of "ne bis in idem". Judgment of the Supreme Court of the Czech Republic on 26 First 2000, sp. no. 7Tz 182/99, the Supreme Court upheld the complaint and any final decision in this case and set aside the indictment deprived the complainant.

Czech social security authorities, however, refused to pay the applicant for the second conviction of a lump sum 36.000, - CZK on the grounds that he had been rehabilitated in accordance with the Criminal Procedure Code and not under the law on judicial rehabilitation. The applicant has failed to judicial review of that decision. He, therefore complained to the Constitutional Court of the Czech Republic.

The Constitutional Court of the Czech Republic, if the Supreme Court inflicted on the complainant completely clean after not carefully prior rehabilitation, lump sum withdrawal is wrong, in direct conflict with the purposes of the Act no. 261/2001 Sb. and the right to a fair trial. In this case, the applicant was convicted and imprisoned twice for the same offense and continued, while for the first part of the sentence he admitted ČSSZ compensation and the second is not.

In this procedure see Constitutional Court CR violation of the principle of equality which consists of the fact that the same procedures should have identical effects. A complaint for violation of the law made in favor of the complainant can not result in a deterioration of its legal status. Czech authorities said procedure denied appellant the right to judicial protection guaranteed by the Art. 36 of the Charter of Fundamental Rights and Freedoms. A complaint for violation of the law has not only removed

159 The higher military court in Olomouc proceeded according to the Act No. 119/1990 Coll.,.

160 CR issued a decision on 18 6th 2002, no. j. 521 004 239 pursuant to Act no. 261/2001 Coll. Provide lump sums of money to participants in the national liberation struggle, political prisoners and persons on racial or religious grounds concentrated into military labor camps and amending Act. 39/2000 Coll.

161 By order of the military court in Brno on the enclosure from day 16. 1.1992, SP. zn. 3Rtv 96/91, in conjunction with the resolution of higher military court in Tabor from day 12. 2.1992, SP. zn. 3Rtvo 3/92, has been abolished in the operative part of the penalty due to the convictions of the court rehabilitation.

the illegality of the proceedings, but also to improve the legal status of citizens. The Constitutional Court of the Czech Republic in their arguments also referred to the conflict process CSSA and the Administrative Court of Art. 6. 1 of the Convention. According to the author the Czech authorities approached the assessment of strictly formal terms and neglected the material side of things, violation of the complainant's right of access to court. That view is mainly due to the Czech authorities did not realize the consequences of applying the substantive guarantees "not twice for the same thing."

Decision-making activity of the judicial type authorities in Europe is rich as for the guarantee „ne bis in idem" and there are many approaches to mentioned topic. The space for the development sees the author in particular in the application practice which should respond, using the material concept to the term deed.

The second sphere of the problem creates the cross-border application of the mentioned guarantee. Problematic is the scope of the art. 4 of Protocol No. 7, which expresses only the national scope of the guarantee. Neither the practice of the European Court of human rights, nor the application of the guarantee "ne bis in idem" in the framework of multilateral treaties in criminal matters within the framework of the Council of Europe, have not led to the creation of a single European standard in this area.[162]

The inspiration may be in the area of the European Union, in the framework of which the rule has developed into the transnational law. This process was the result of the Schengen integration and deeping the cooperation in the common area of freedom, security and justice. Such a procedure guarantees the protection of the rights of the accused person and the mutual application of criminal law guarantees.[163]

On the other hand, the space for the assessment of the relationship of the administrative offences and offences as for the identity of the act remains open. It is often difficult to assess whether the conduct of the responsible entity complies with the characters of the administrative tort or criminal offence, or whether the Act was committed or whether the responsible entity did commit several different offences. All of the mentioned decisions have emphasized the substantive approach to the assessment of the concept of deed. They pointed to the fact that the special criminal procedural guarantees are in the continental legal system treated similarly, or almost in an identical manner. However, the adjustment of the administrative punishment is greatly fragmented not only in Slovakia, but in the whole of Europe. Administrative offenses in Poland form the part of the criminal law. In Great Britain the administrative offenses are heard by the independent administrative tribunals[164], which in some degree separate from the system of public administration, but still have its "stain".[165]

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[162] K tomu bližšie pozri: Vervaele, J. A. E. : The transnational ne bis in idem principle in the EU. Mutual recognition and equivalent protection of human rights, In. Utrecht Law Review, Volume 1, Issue 2, (December) 2005, s. 117

[163] K tomu bližšie pozri: Vervaele, J. A. E. : The transnational ne bis in idem principle in the EU. Mutual recognition and equivalent protection of human rights, In. Utrecht Law Review, Volume 1, Issue 2, (December) 2005, s. 117 - 118

[164] Machajová, J. a kol. : Všeobecné správne právo. 4. Vydanie. Žilina : Eurokódex. 2009, s. 190.

[165] Potasch, P. : Systém tribunálov Anglicku ako integrálna súčasť správnej justície. In : Správne súdnictvo a jeho rozvojové aspekty. Bratislava : IKARUS.SK – EUROUNION. 2011 s. 161.

Solution to the inconsistencies may be the European standards of proper punishment created by the Council of Europe. They do affect the national administrative punishment in an important way. In particular, the recommendations and resolutions of the Committee of Ministers of the Council of Europe express these standards. These define the general constitutional requirements for the proceedings of public authorities as well as requirements arising from international treaties.[166]

In that respect, the Convention, but also the decision-making activity of constitutional courts in European countries, emphasizes not only the assessment of legal aspects of the action of an offender but also the assessment of the factual aspects.

[166] Machajová, J. a kol. : Všeobecné správne právo. 4. Vydanie. Žilina : Eurokódex. 2009, s. 19.

Annex 1: The Act no. 71/1967 Coll. from June 29th 1967 on the administrative proceedings (Administrative Code)

The National Assembly of the Czechoslovak Socialist Republic adopted the following act:

THE FIRST PART INTRODUCTORY PROVISIONS

SECTION 1

THE SCOPE OF THE ACT

Art. 1

1. This act shall apply to the proceedings in which the administrative authorities in the field of public administration adopt decisions on the rights, law protected interests or obligations of natural persons and legal persons, if a special law does not provide otherwise.
2. Administrative authority is a public body, the body of territorial self-government, the body of interest self-government authority, natural person or legal person entrusted by the law to decide on the rights, law protected interests or obligations of the natural persons and legal persons in the field of public administration.

Art. 2

Has been revoked by the Act no. 527/2003 Coll. with effect from since January 1st 2004.

SECTION 2

THE BASIC RULES OF PROCEEDINGS

Art. 3

1. The administrative authorities shall act in the proceedings in accordance with laws and other regulations. They are obliged to protect the interests of the state and society, the rights and interests of individuals and legal persons and they are required to comply strictly with their obligations.
2. The administrative authorities are obliged to follow the proceedings in close cooperation with the parties, interested persons and other persons concerned by the proceeding, and always give them the opportunity to put their rights and interests to defend, especially to comment on bases of decisions and exercise their proposals. The administrative authorities shall provide the parties interested persons and other persons concerned by the proceeding with the provide assistance and guidance, to prevent them from suffering a damage for the lack of knowledge of the laws.
3. Slovak citizen who is a person belonging to a national minority, and who has the right to use a minority language under a special regulation, has in the communities the right defined by special regulation to act before an administrative authority in the minority language. Administrative authorities under the first sentence are required to ensure such citizen with equal opportunities to exercise his rights.
4. The administrative authorities are obliged to dutifully and responsibly deal with any matter which is the subject of proceedings, resolve it on time and without undue delay and to use appropriate means which lead to a proper settlement of the case. If the nature of thing allows, is the administrative authority always bound to try to achieve a friendly resolution. The administrative authorities shall ensure that the proceeding was carried out efficiently and without undue burdens on the parties and others.
5. Administrative decisions must be based on reliable detection of the case. Administrative authorities shall ensure that the decisions on the merits of identical or similar cases would not result in unwarranted differences.
6. Administrative authorities are required on the notice board administrative body, on the Internet, if they have access to it, or in other appropriate manner comprehensible and timely inform the public about the initiation, implementation and terminating the proceeding in matters that are of interest to the public or in matter set out by the specific law. They are also obliged to protect the rights and legally protected interests of the parties and others. The notice board of an administrative body must be permanently accessible to the public.
7. The provisions of the basic rules of proceedings set out in paragraphs 1 to 6 shall also apply appropriately to the issuance of certificates, opinions, statements, recommendations, and other similar measures.

Art. 4

1. Parties (Art. 14) cooperate with the administrative authorities throughout the whole proceedings.
2. All parties to the proceedings have the same procedural rights and obligations. If the specific law confers the status of a party only to the part of the proceeding, such party shall have procedural rights and obligations only in that part of the proceedings for which the party has the status of a party.

PART TWO

ADMINISTRATIVE AUTHORITIES, PARTIES AND INTERESTED PERSONS

SECTION 1

COMPETENCE

Art. 5

Materially competent on the proceedings administrative authorities set out by the special law, if a special law does not stipulate the competent authority, the municipality is then competent to decide.

Art. 6

1. If the authority, that is competent to the proceedings, is internally divided into departments authorized by law to act independently, is the administrative authority competent to act in the first instance, the body established by law.
2. If the authority, that is competent to the proceedings, the competent authority to act on behalf of this administrative body in the first instance is the department designated by law or department designated by statute or regulation governing its internal relations ("the Statute").
   If the statute does not determine this unit, the body competent to the proceedings is the statutory authority of the administrative body.
3. Special laws shall determine in which cases the commissions, boards or otherwise identified collective bodies (hereinafter the "Commission") are competent to the proceedings.

Art. 7

1. In proceedings the object of which is the activity of a party, the territorial competence is a place of such activity; if the proceeding is connected with real-estate property, the territorial competence is governed by the place of such real-estate property.
2. If the territorial competence cannot be determined under paragraph 1 or pursuant to a special law, the territorial competence is governed by residence of a party and if the party is a legal entity by its registered office or place of location of its subsidiary, that creates the matter of the case. If a party does not have permanent residence in the Slovak Republic, the territorial competence of the proceedings of governed by residence under a special law; if the party has no such residence, the territorial competence of proceedings is governed by his last permanent residence in the Slovak Republic; if a party has no such residence, territorial competence is governed by the place where the party usually resides. If party to the proceedings is a legal entity which is established in the Slovak Republic, the territorial competence to the proceedings of governed by its last registered in the Slovak Republic or last place of

the presence of its subsidiary in the Slovak republic that creates the mater of the case.
3. If there are a number of territorially competent administrative authorities, the proceeding is carried out by the administrative authority, which first brought the action, unless the competent authorities agree otherwise.
4. If there are a number of territorially competent administrative authorities, and each of them refuses to take the proceedings, the authority of next higher level supervisory to them will determine which of these authorities shall carry out the proceedings.
5. If the territorial jurisdiction cannot be determined under the foregoing provisions, the nit shall be determined by central state administration body, within the scope of the matter belongs, which competent administrative authority, shall carry out the proceedings.

Art. 8

At the request of a party or with his consent the administrative authority competent under the Art 7. par. 2 may refer the matter to another competent administrative authority of the same degree, in whose territorial competence a party has the workplace or temporary residence, to decide the case. Such a reference is a subject to the consent of the other parties to the proceedings and authority to which it the proceedings has been referred to.

SECTION 2

THE EXCLUSION OF EMPLOYEES OR MEMBERS OF THE ADMINISTRATIVE AUTHORITIES

Art. 9

1. The employee of the administrative body is excluded from hearing and deciding the case, if, having regard to his relation to the matter, the party to the proceedings or their representatives may have doubts about his impartiality.
2. An employee is excluded from the hearing and deciding the case before the administrative authorities, if he participated in the same case in the proceedings as an employee of the administrative authority of another degree.

Art. 10

The party shall notify to the administrative authority all the facts indicating the exclusion of an employee of administrative authority (Art. 9), as soon as they are known.

Art. 11

1. As soon as an employee of an administrative authority becomes aware of facts suggesting his exclusion (Art. 9), he or she immediately communicates his or her exclusion to his or her immediate superior or to the head of an administrative authority; the head of administrative authority shall communicate such fact to the superior administrative authority.

2. Biased employee of administrative authority will do only those acts that do not allow the default.

Art. 12

1. Whether an employee administrative body is excluded from the proceedings, an administrative authority that has been notified with such facts decides (Art. 1. par. 1); if the authority, which was notified with the grounds for exclusion, has decided on the exclusion of an employee, it also adopts the measures to ensure proper implementation of the next proceedings.
2. The decision on exclusion of an employee of an administrative authority from the proceedings cannot make a separate appeal.

Art. 13

1. For the same reasons as an employee of an administrative authority (Art. 9) the member of the Commission which conducts the proceedings is also excluded from the hearing and deciding the case.
2. As soon as member of the Commission becomes aware of facts indicating his exclusion, it shall immediately notify the Chairman of the Commission, which decides whether a member of the Commission is excluded from the proceedings. Chairman of the Commission shall immediately notify the facts suggesting his exclusion from the Commission, which will decide on his or her exclusion from proceedings.
3. The provisions of Art. 10, Art. 11 Par. 2 and Art. 12 Par. 2 shall apply accordingly.

SECTION 3

THE PARTY TO THE PROCEEDINGS AND THE INTERESTED PERSON

Art. 14

1. Party to the proceedings is the one whose rights, legally protected interests or obligations create the mater of the case, or whose rights, legally protected interests or obligations may be directly affected by a decision; party to the proceedings is also the one who claims that the decision may directly affected his rights, legally protected interests or obligations, until the contrary is proved.
2. Party to the proceedings is the one to whom a special law recognizes this status.

Art. 15

A participant may act independently on the extent to which he or she has an ability to acquire the rights by his or her own actions and to which he or she has an ability to be subject of obligations.

Art. 15a

1. A special law may provide the conditions under which a person other than the party ("the person concerned") may participate on the proceeding or a on its part.

2. The person concerned has the right to be notified of the initiation and other submissions of the parties, to be present at the hearing and the local sighting, the person concerned has also to suggest the evidence and to a supplement the grounds for the decisions. A special law may provide more rights to a person concerned.

SECTION 4

THE REPRESENTATION

§ 16

1. Party who can act alone is represented by legal representative, if he does not have the legal representative and it is necessary to defend his rights, administrative authority shall appoint him the guardian.
2. The administrative authority shall appoint the guardian also to the party, whose residence is unknown or whom it has failed to deliver a document to a known address abroad. The administrative authority shall appoint the guardian also to the party, who does not have a guardian and who is suffering from a mental disorder or another disorder, preventing him to act within the proceedings.

Art. 17

1. The parties, their legal representatives and guardians may be represented by an attorney or other representative of their choice.
2. Legal entity acts through its organs or through a representative.
3. Powers of representation must be demonstrated in a written form or in a form declared in to the record. The administrative authority may in undoubted cases waive the proof of power of representation.
4. If several parties made a joint submission, they shall choose a common representative for delivering; otherwise it shall be determined by the administrative authority. The decision on the designation of a common representative for delivering cannot be appealed.

THIRD PART

CONDUCT OF THE PROCEDURE

SECTION 1

GENERAL PROVISIONS

Art. 18

The initiation of proceedings

1. Procedure shall be initiated at the request of a party or on the initiative of the administrative authority.
2. The proceedings is initiated on the day when the submission of party has come to the administrative authority competent to issue the decision. If the procedure is initiated on the initiative of the administrative authority, is the proceedings initiated on the day when the authority has made the first act to the party.
3. The administrative authority shall notify all known parties about the initiation of the proceedings; if the parties or their residence are not known, or unless a specific law stipulates so, the administrative authority shall notify all the parties on the initiation of the proceedings by a public notice.

Art. 19

Submission

1. Submissions may be made orally in the record or in writing, or by electronic means certified electronic signature under a separate law. Submissions can also be done by telegram or telefax; such a submission containing a proposal must be supplemented in writing or orally within three days.
2. Submissions are assessed according their content. Submissions must make clear who is doing them, what matters do they cover and what are they proposing. Special laws may provide other essentials.
3. If submission does meet the prescribed requirements, the administrative authority shall help the party to remedy the submission, or possibly it shall call the party to remedy the submission in the determined time-limit and at the same time it shall instruct the party that it shall stop the proceedings, if the party does remedy the submission.
4. Submissions shall be submitted to the materially and territorially competent authority (Art. 5 - 7).
5. At the request of a party the administrative authority must confirm the acceptance of the submission.

Art. 20

Reference

If the administrative authority is not competent to decide, it shall promptly refer the submission to the competent administrative authority and it shall notify the party. Where there is a risk of the default, the administrative authority shall take the necessary actions, in particular, to reverse the impending damage.

Art. 21

Oral hearing

1. The administrative authority shall order oral hearing, if it is required by the nature of case, especially if it shall contribute to the clarification of the case or if it is prescribed by a special law. If an inspection should take place within the oral hearing, the oral hearing is conducted on place of the inspection.
2. The administrative authority will invite all the parties on the oral hearing and invite them to make comments and suggestions within the oral hearing. Special laws shall determine the cases in which the later raised objections and suggestions are ignored; the parties must be expressly warned on such facts.
3. An oral hearing is held in private, unless a special law or the administrative authority provides otherwise.

Art. 22

Record

1. The administrative authority shall make the records on oral submissions, important action within the proceedings, in particular on the executed evidence, on the pleadings of the parties, on the oral hearing and on the vote.
2. It must clear from the record in particular who carried out the proceedings, where and when proceedings was carried out. It also must clear what was the conduct of the proceeding, who was present at the proceeding, what proposals were submitted and what ,ensures were adopted; the record on the vote shall also include a statement of reasons of the decision and the outcome vote.
3. Having read it loudly the record must be signed by all the present persons and by an employee (member) of the administrative authority, who participated in the proceedings; the record on voting must be signed by all the members of the administrative authority. Refusal to sign, the reasons for the refusal and the reasoning to the refusal to sign the record shall also be recorded in it.

Art. 23

Inspection of files

1. Parties and their representatives and persons concerned have the right to inspect the documents and make extracts from them, make depreciations of the files and receive copies of the files, or get information from the files otherwise, except the record on voting.
2. The administrative authority may allow to inspect the documents and make extracts from them, make depreciations of the files and receive copies of the files, or get information from the files otherwise also to other persons if they prove the justification

of their request. The administrative authority is obliged to allow inspecting the files the Ombudsman in the exercise of its jurisdiction.
3. The administrative authority is required to take action no to disclose classified information, bank secrecy, tax secrets, commercial secrets or infringe professional secrecy imposed or recognized by a special law by the process referred to in paragraphs 1 and 2.
4. The administrative authority shall provide copies of files for the payment of material costs associated with making copies, providing technical carriers and shipping them.

Advanced notification

Art. 24

1. Important documents, in particular, the decision shall be delivered to the addressee or to the person who proves the administrative authority the empowerment to accept shipments in their own hands.
2. If the addressee of the document to be delivered by hand was not caught, even though staying at destination, deliverer will appropriately inform that the document will come again to deliver at the specified date and time. If a new attempt to deliver remains ineffective, the deliverer will deposit the document at the post office and notify the addressee in an appropriate manner about the deposit. If the addressee fails to collect the document within three days of the deposit, the last day of such period shall be considered the date of delivery, even if the addressee did not learn about the deposit.
3. If the addressee has unreasonably refused to accept the delivery, it is delivered on the day of the refusal, the deliverer must warn the addressee on such consequences.
4. If the party, who is staying abroad or there is established, has a guardian or representative in the Slovak republic, the document will be delivered to that guardian or representative.

Art. 25

1. The documents addressed to own hands to the authorities and legal entities shall be delivered to their employees authorized to receive documents. If the employee is not intended to receive documents, the document set to the own hands will be delivered to the person who is entitled to act for a legal entity or body.
2. If the document cannot be deliver to a legal entity to the address indicated or known, nor is the address of its registered office listed in the commercial register or other register in which it is registered, and the other address is not known to the administrative authority, the document shall be considered delivered three days after the return of the undelivered document to the administrative authority, even if the person who is authorized to act on behalf of the legal entity did not learn on such delivery.
3. If the document cannot be deliver to an entrepreneur – natural person to the address indicated or known, nor is the address of its registered office listed in the trade Licensing register or other register in which it is registered, and the other address is not known to the administrative authority, the document shall be considered deliv-

ered three days after the return of the undelivered document to the administrative authority, even if the entrepreneur – natural person did not learn on such delivery.
4. If the addressee has reserved for the delivery of mail the mailbox, post office will notify the addressee of arrival of the shipment, possibility downloadable and subscription period in the prescribed form, which will insert into the mailbox. If a recipient accepts shipments under the agreement on the post office and has no assigned folder, the post office does not notify these items. In both cases, the date of arrival of the shipment is to be considered the date of deposit. If the addressee fails to collect the document within three days after the deposit, the last day of such period shall be considered the date of delivery, even if the addressee of the failed to learn about the deposit.
5. If a party has a representative with full power of attorney, the written documents addressed to own hands are delivered to that representative. The provisions of paragraphs 1 to 3 shall apply to such delivery. However, if a party to proceedings has to personally do something within the proceedings, the document is delivered not only to a representative but also to him.

Art. 26

Notification with a public notice

1. Delivery by a public notice shall administrative authority use where the parties or their stays are not known to him, or unless stipulated by a special law.
2. Delivery by a public notice shall be made so that the document shall be displayed for 15 days on the official board of the administration. The last day of this period is the date of delivery. The administrative authority shall also publish the document at the same time in a way usual to place of display, especially in the local newspapers, on radio and on temporary notice board of the Administration.

Time-limits

Art. 27

1. If necessary, the administrative authority shall determine on performance of an act in the proceedings a reasonable time limit if it is not stipulated by this Act or a special law.
2. Time limits shall not include the day of the event determining the start of the time limit. The time limits specified in weeks, months or years expire at the end of the day, whose indication is identical with the day of the event determining the start of the time limit, and if such day is not in the month, the time limit ends on the last day of the month. If the end of the time limit falls on a Saturday or on a rest day, it shall be extended until the next workday.
3. The time limit is kept, if the last day of time limit the submission is submitted at the administrative authority listed in Art. 19 par. 4 or when submission is submitted for posting.
4. In case of doubt the time limit shall be considered as preserved, unless proven otherwise.

Art. 28

1. The administrative authority on reasonable grounds forgives a missed time limit, if a party requests within 15 days from the date of removal of the cause of failure to comply, and if in the same time limit perform the omitted action. The administrative authority may grant this request suspensive effect.
2. Missed time limit cannot be granted where from the date on which the action was supposed to be done, one year has passed.
3. The decision on the application for remission of missed time limit cannot be appealed.

Art. 29

Stay of proceedings

1. The administrative authority shall stay the proceeding if proceedings on a preliminary ruling has been instituted or if the party was called in prescribed time limit to remove the submission deficiencies, or if the party has no guardian or a guardian appointed, although it should have, or if so stipulated by a special law.
2. The administrative authority may also stay the proceedings for a period no longer than 30 days, if the parties propose it identically for important reasons.
3. The decision on the stay of proceedings may not be appealed.
4. The administrative authority continues in the proceedings on its own initiative or at the request of a party, just as there are no longer barriers for which the proceedings discontinued, possibly as soon as the time limit referred to in par. 2 expired.
5. If the proceeding is discontinued, the time limits under this Act shall not continue.

Art. 30

Suspension of proceedings

1. The administrative authority shall suspend the proceedings if
   a) it finds that the person filing Application initiating the proceedings, is not a party and the proceedings cannot be started on the initiative of the administrative authority,
   b) the party withdrew its proposal initiating the proceedings and there is no other party or other parties agree to withdrawal of the proposal and the proceedings cannot be initiated by the administrative authority,
   c) party died, was pronounced dead or folded without a legal successor and the proceedings concerned only that party,
   d) party on the call the administrative authority did not remove the deficiencies of his submission within a specified time limit and was instructed of the possibility of suspension of the proceedings,
   e) finds that it is not competent to the proceedings and the matter cannot be transferred to the competent authority,
   f) it finds that other competent authority has already started to act in the case, if the administrative authorities did not agreed otherwise,
   g) finds that before filing the case the court started acting, unless a special law stipulates otherwise,

h) grounds of the proceedings initiated by the administration have ceased,
i) the same case was finally decided, and the facts are substantially unchanged,
j) a special law stipulates so.

2. The decision on the suspension of the proceeding under the par. 1 letter b), c), f), g) a h) cannot be appealed.
3. The decision on the suspension of the proceeding under the par. 1 letter b) a c) shall only be recorded in the file.

Art. 31

The costs of the proceeding

1. The costs arising within the administrative authority shall be borne by the authority. The costs which arisen in the proceedings to the party shall bear the party. The costs which have arisen to the interested persons shall be borne by the interested persons.
2. The administrative authority may impose the parties, the interested persons, witnesses and experts to replace the costs incurred to the administrative authority of their fault; it can also impose them to replace the costs incurred by their fault to the other parties.
3. The administrative authority shall pay the witness cash expenses and wages, which has him provably fled. The claim must be made within 3 days after the hearing, otherwise expires.
4. Costs associated with the submission of documents or inspection, resulting to the person who is not a party to the proceedings shall be borne by the administrative authority.(5) Replacement of expenses and the provision of reward to experts and interpreters shall be governed by specific legislation.

SECTION 2

DETECTING THE GROUNDS FOR THE DECISION

Grounds for the decision

Art. 32

1. The administrative authority is required to determine accurately and completely real state of the case and to acquire necessary data for the decision. Yet it is not only bound by the parties' claims.
2. The grounds for the decision are mainly submissions, proposals and statements of the parties, evidence, affidavits, as well as the facts generally known or known the administrative authority from its official activities. Scope and method for the detection of the grounds for the decision specifies by the administration.
3. At the request of the administrative authority the state authorities, local government authorities, natural and legal persons are required to report the facts, which are important for hearing and decision.

Art. 33

1. The party and the person concerned has the right to propose the evidence and to supplement them and ask questions to witnesses and experts at the hearing and local inspection.
2. The administrative authority shall give the parties and involved persons the opportunity to comment the decision on its ground also on its origin or to propose the amendment of the ground of the decision before its issuance.

Art. 34

Taking of evidence

1. All the means by which to identify and clarify the true state of affairs and are in compliance with the law can be used on the taking of evidence.
2. The evidence includes in particular the examination of witnesses, expert reports, documents and inspection.
3. The party is obliged to propose the evidence that he is aware of to support its claims.
4. The execution of the evidence belongs to the administrative authority.
5. The administrative authority evaluates the evidence at its discretion, and each of them separately and all of them in their mutual relations.
6. Facts that are generally known or known the administrative authorities of its own activities do not have to proven.

Art. 35

Witnesses

1. Everyone is obliged to appear as a witness, must testify truthfully and not concealing anything.
2. As a witness may not be interrogated the one who would make available classified information, bank secrecy, tax secrets, commercial secrets or violated by law expressly imposed or accepted non-disclosure obligation, except if he was unburdened of this duty by the competent authority or the one in whose interest is so liable.
3. Testimony may refuse the one who would cause a danger of prosecution to himself or persons close to him; their calculation shall be governed by the Civil Code.
4. The administrative authority shall instruct the witness before the hearing of the possibility of silence, about his obligation to testify truthfully and not to withhold anything and about the legal consequences of the false or incomplete statements.

Art. 36

Experts

If for the technical evaluation of the facts relevant to the decision an expert opinion is required, the administrative authority shall nominate an expert. The decision on the nomination of an expert can be appealed.

Art. 37

Documents

1. The administrative authority may impose the party or other person who has the

document necessary for the implementation of evidence to submit it.
2. Submission of documents may not be requested or may be denied on the same grounds as on which an interrogation of witness may not been carried out or on the same grounds on which a witness is entitled to remain silent.

Art. 38

Inspection

1. The owner or user of the thing is obliged to submit the thing to the administrative authority the object of the inspection or tolerate the inspection at the place of the thing.
2. The inspection may not be executed or may be refused on the same grounds as on which an interrogation of witness may not been carried out or on the same grounds on which a witness is entitled to remain silent.
3. The administrative authority shall invite the party and the person who is entitled to dispose the object inspection to the local inspection.

Art. 39

Affidavit

1. The administrative authority may allow the affidavit of the party instead of the evidence if a special law stipulates otherwise.
2. The administrative authority shall not allow the affidavit if it collides to the public interest or if it would breach the equality between the parties. The affidavit cannot replace the expert opinion.
3. The party is obliged to give the truthful information within the affidavit. The administrative authority has to notify a party on the legal consequences of a false affidavit.

Art. 40

Preliminary questions

1. If there is a question in the proceedings, which was finally decided by the competent authority, the administrative authority is bound by that decision; otherwise the administrative authority may consider such question independently or call the competent authority to initiate the proceedings.
2. The administrative authority cannot consider a preliminary question as to whether a person has committed a crime, misdemeanor or other administrative offense. The administrative authority cannot consider a preliminary question as to the status of natural persons, or the existence of a legal person, if it falls on the court to decide.

SECTION 3

PROVIDING THE CONDUCT OF PROCEEDINGS.

Art. 41

Writ Of Summons

1. The administrative authority shall summon persons whose personal involvement in present case is necessary.
2. In the summons the administrative authority notifies on the legal consequences of failure to appear.

Art. 42

Rendition

1. A party or witness who has failed to come for re-summons to the administrative authority without proper justification or without reasonable grounds and without whose personal involvement the proceedings cannot be performed, may be brought to the administrative authority.
2. The Police Force carries out the rendition upon a written request administrative authority.

Art. 43

Interim measures

1. The administrative authority may, before the end of the proceedings to the extent necessary to ensure its purpose.
2. impose parties to implement something, to refrain from something or to tolerate something;
3. order to ensure things that shall be destroyed or made redundant, or which are necessary for the implementation of evidence.
4. The administrative authority revokes the interim measure as soon as there is no reason for which it was ordered; otherwise the interim measure expires on the date when the decision on the matter comes into force.
5. An appeal against the decision on interim measure shall not have suspensive effect.

Art. 44

Letter of request

1. Administrative authorities carry out procedural actions within the territory of their competence.
2. If the administrative authority cannot perform any procedural act in district of its competence or, as appropriate for other reasons, it is entitled to send a letter of request for its execution another administrative authority of the same or lower level.
3. Requested administrative authority is obliged within its scope to grant the letter of request in any event within 15 days, if there is no other time limit specified.

Art. 45

Procedural order measures

1. He who makes it difficult to continue the proceedings, especially by failing to show to the administrative authority without serious reasons, or by disturbing the procedural order despite previous warnings, unreasonably refuses to testify, unreasonably

refuses to submit a document or disturbs the inspection, the administrative authority may impose a fine up to 165 Euros. The administrative authority may impose a fine repeatedly.
2. Whoever roughly disturbs the procedural order, the administrative authority may also expel such a person from the place of the hearing; if the party is expelled the proceeding may continue in his absence.
3. Administrative authority which imposed a fine may also forgive it.

SECTION 4

THE DECISION

Art. 46

The decision shall be in accordance with laws and other regulations, shall be issued by the competent authority, must be based on reliable detection of the case and shall contain the prescribed requirements.

Art. 47

Requirements of the decision

1. The decision must include a verdict, statement of reasons and instruction on appeal (appeal against the decision of central state authority). Instruction is not required if all the parties met in full.
2. Verdict shall include the decision in the case, the provisions of the legislation under which the case was decided or the decision of the obligation to pay the costs. When a decision imposes the party to fulfill an obligation, the administrative authority shall also determine the time limit for its fulfillment that shall not be shorter than stipulated by a special law.
3. In the statement of reasons of the decisions the administrative authority sets out the facts that were the basis to the decision, what were the considerations in the evaluation of evidence, how the discretionary power were applied within the use of law, and how did the administrative authority deal with the proposals and objections of the parties and their statements to the grounds for the decision.
4. Instruction on the appeal (appeal against the decision of the central state authority) includes an indication of whether the decision is final or whether it can be appealed (appealed against the decision of the central state authority), in what time limit on which authority and where to lodge an appeal. The instruction also includes an indication of whether the decision can be reviewed by the court.
5. A written version of the decision shall also state the authority issuing the decision, the date of the decision, the name and surname of a natural person and a legal entity. The decision must bear the official stamp and signature, full name and function of an authorized person. Specific legislation may provide further requirements of the decision.
6. Errors in typing, in numbers and other obvious errors in the written version of the

decision shall the administrative authority correct even without proposal and notify the parties.

7. Special laws provide cases in which the decision fully complies to the party. The administrative authority records the decision in such cases in the file and instead of written ruling it provides a separate certificate or offers a proposed fulfillment.

Art. 48

Settlement

1. If permitted by the nature of the case, the parties may between themselves with the approval of administrative authority conclude a settlement. The administrative authority shall not approve the settlement if it contradicts the law or public interest.
2. There is no appeal against the approved settlement. The approved settlement is enforceable.

Art. 49

The time limit for a decision

1. In simple cases, especially when it may be decided on the basis of documents submitted by the parties, the administrative authority shall decide without delay.
2. In other cases, where a special law stipulates otherwise, is the administrative authority obliged to decide on the matter within 30 days from initiation; in particularly complicated cases shall the administrative authority decide within 60 days; if it cannot decide even within such a time limit, because of the nature of the case, the appellate authority may extend the time limit appropriately (authority competent to decide on the appeal). If the administrative authority cannot decide until 30 or up to 60 days, it is obliged to notify the party with the reasons of the extension of time limit.

Art. 50

Measures against the inactivity of the administrative authority

If permitted by nature of the case and if remedy cannot be achieved otherwise, the authority which would otherwise be competent to decide on the appeal itself shall settle the matter, if an administrative authority competent to decide did not to initiate the proceedings, although it is obliged to initiate the proceedings or if the administrative authority competent to decide did not decide in time limit stipulated in Art. 49 par. 2.

Art. 51

Notification of the decision

1. The decision shall be notified to the party by delivering a written copy of the decision, unless the law stipulates otherwise. Date of delivery of the decisions is the date of the notification.
2. The decision may be orally notified to the party who is present; the date of oral notification is also the date of the delivery, only if the party did give up the right to the delivery of a written copy of the decision.

3. If the administrative authority issues instead of delivery of the written copy of the decision a specific certificate, the date of notification is the date of acceptance of the certificate by the party. If the administrative authority provides instead of delivery of the written copy of the decision a specific fulfillment, the date of notification is the date of acceptance of the fulfillment by the party.

Art. 52

The finality and enforceability of the decision

1. The decision which may not be appealed (appealed to the central state authority), is final.
2. The decision is enforceable if it may not be appealed (appealed to the central state authority) or where the appeal (appeal to the central state authority) shall not have suspensive effect.

PART FOUR

REVIEW OF DECISIONS

SECTION 1

THE APPEAL PROCEEDINGS

Art. 53

The party is entitled to appeal against the decision of the administrative authority, unless the law stipulates otherwise or unless the party did not the give the appeal in writing or orally to the record.

Art. 54

1. The appeal shall be submitted to the administrative authority which issued the contested decision.
2. The appeal must be submitted within the time limit of 15 days from the date of notification of the decision, unless a special law stipulates a different time limit.
3. If the party due to improper instruction or for that fact that it was not instructed at all submitted an appeal out of the time limit, it is assumed that it submitted the appeal within the time limit unless the appeal was submitted not later than three months from the date of notification of the decision.
4. A party may withdraw an appeal, until the appeal was not decided. If the party withdrew the appeal, it cannot be submitted again.

Art. 55

1. If a special law stipulates otherwise, timely submitted appeal has suspensive effect.
2. If it requires an urgent public interest or where there is a risk that the suspension of the decision shall cause to the party or to anyone else irretrievable damage, the administrative authority may exclude a suspensive effect of the decision; the urgency must be properly justified. Suspensive effect cannot be excluded, unless so stipulated by a special law.
3. There is no appeal against the decision on the exclusion of the suspensive effect.

Art. 56

The competent administrative authority which issued the contested decision, shall notify the other parties of the contents of an appeal, calling them to comment on it, and where necessary to complement proceedings by performing newly proposed evidence.

Art. 57

1. The competent administrative authority which issued the contested decision, may

decide itself on an appeal unless the appeal is fully accepted and unless the decision shall not touch other party to the proceedings different than the appellant or when the other parties agree.
2. When the administrative authority who issued the contested decision shall not decide, the appeal shall be together with the results of amended proceeding and the case file sent to the appellate authority within 30 days of the date on which the appeal has been submitted. The party to the proceedings shall be instructed on such procedure.

Art. 58

1. If a special law stipulates otherwise, an appellate authority is the administrative authority the next higher level superior to the administrative authority which issued the contested decision.
2. The appeal against the decision of the legal person shall decide body prescribed by law, and if the law does not designate such body, the appeal shall decide the department designated by the statute, unless such body does not exist, the authority, which established or founded the administrative authority of first instance shall decide.
3. If the appellate body cannot be determined in accordance with par. 1 and 2, the head of administrative authority shall decide on a proposal by him established special commission.

Art. 59

1. The Appellate Body shall examine the contested decision in its entirety, if necessary, supplement the existing proceedings or remove detected defects.
2. If there are the reasons, the Appellate Body shall change or revoke the decision; otherwise it shall reject the appeal and confirm the decision.
3. The Appellate Body shall revoke the decision and return the case to the administrative authority which issued the contested decision to a new hearing and decision, if it is particularly preferable for reasons of speed and efficiency; the administrative authority is then bound by the legal opinion of the Appellate Body.
4. The appeal cannot be further appealed against the decision Appellate Body.

Art. 60

The Appellate Body shall examine also the delayed appeal from the point of view whether it does establish a retrial of the proceedings whether it does establish a change or revocation of the decision the decision out of the appellate proceeding.

Art. 60a

The provisions of the first to the third part shall apply adequately also to the appellate proceedings.

Art. 61

1. Against the decision of the central state authority issued in the first instance the appeal may be submitted to the central state authority within the time limit of 15 days

from the date of notification of the decision, timely submitted an appeal against the decision of the central state authority has suspensive effect.
2. The head of the central state authority decides on the appeal submitted to the central state authority under the proposal of him established special commission. There is no appeal against this decision.
3. The provisions of appellate proceedings shall apply adequately to the proceedings on appeal submitted to the central state authority.

SECTION 2

RETRIAL OF THE PROCEEDINGS

Art. 62

1. Proceedings before an administrative authority terminated by the decision, which is final, may be reopened on a proposal of a party, unless
   a) facts or evidence which could have a significant impact on the decision and the procedure and could have not been applied without fault of the party have come to light new;
   b) decision depended on the ruling of a preliminary question, on which the competent authority has decided otherwise;
   c) the malpractice of an administrative authority denied the party the opportunity to participate in the proceedings and it could have a significant impact on the decision and unless the remedy could not have been done within the appellate proceedings;
   d) an excluded authority issued the decision (Art. 9 and 13), unless it would have a significant impact on the decision and unless the remedy could not have been done within the appellate proceedings;
   e) decision is based on the evidence, which proved to be false, or the decision was reached by committing a crime.
2. The administrative authority shall order a retrial of the proceedings for the reasons set out in paragraph 1, unless there is a general interest on the review of a decision.
3. The retrial of the proceedings is not permissible if the decision granted the party an approval for labor law proceedings or civil law proceedings or if a decision in the matter of personal status was issued and the party acquired the right in good faith.

Art. 63

1. Administrative authority that ruled on the matter at the final stage shall allow the retrial of the proceedings on the proposal of a party. The administrative authority shall order the retrial of the proceedings on its own initiative.
2. The proposal on the retrial must state the reasons for retrial and facts to suggest that the application is submitted on time.
3. The proposal shall be submitted to administrative authority listed in par. 1 within three months from the date when was party became aware of the reasons for recovery, but not later than three years after the final decision, in the same period, the ad-

ministrative authority may order a retrial. Missed period (Art. 28) cannot be waived.
4. Three years after the date the decision became final the proposal on a retrial may be submitted or the retrial may be ordered retrial only if the decision has been reached by committing a crime.
5. The decision on the reopening of the case can be appealed (appealed against the decision of the central state authority). The decision on the permission or order of a retrial has a suspensive effect, unless the contested decision has not yet been carried out.

Art. 64

1. New proceedings shall carry out the administrative authority whose decision shall touch the ground for reopening the proceeding; unless was reason for retrial decision concerning administrative authorities of the first and also of the second instance, a new proceedings carries out the administrative authority of the first Instance.
2. If the reason for a retrial shall refer only to proceedings before the appellate authority, it shall connect the decision on a retrial with a new decision in the matter.
3. The new decision in the case revokes the original decision.
4. The new decision in the matter may be appealed (appeal against the decision of the central state authority).

SECTION 3

REVIEW OF THE DECISION OUT OF THE APPELLATE PROCEEDINGS

Art. 65

1. The decision, which is final, may on its own or other initiative, review the administrative authority of the next higher level superior to the administrative authority which issued the decision (Art. 58); unless it regards the decision of the central state administrative authority, the head of the central state administrative authority on the proposal him established special commission may review such a decision (Art. 61 par. 2).
2. The administrative authority competent for a review of a decision shall revoked it or changes it, if it was issued in contrary to the law, generally binding legal regulations or generally binding ordinance. When revoking or modify the decision it shall ensure that rights acquired in good faith were the least affected.
3. When reviewing a decision applies the administrative authority the legal situation and the facts at the time of the decision. Therefore the administrative authority cannot revoke or modify the decision if after its issue the essential facts on which the original decision was based subsequently modified.

Art. 66

The administrative authority which issued the decision can also full satisfy the initiative of the party to review the decision, unless the decision concerns no other party to

the proceeding, or if all the other parties agree with such procedure.

Art. 67

The decision by which the party has been given the consent on a civil law action or labor law action or which was decided in matters of civil status cannot be revoked or amended out of appellate proceedings if the party has acquired the rights in good faith.

Art. 68

1. The administrative authority cannot revoke or change the decision out of appellate proceedings after three years from the date the contested decision became final.
2. A decision revoking or amending the decision out of appellate proceedings may be appealed (appeal against the decision of the central state administrative authority). If the administrative authority notified that it has begun to review the decision out of appellate proceedings, the time limit for appeal under paragraph 1 shall not apply on review a decision.

SECTION 4

PROCEEDINGS ON THE PROTEST OF THE PROSECUTOR

Art. 69

1. If the prosecutor submitted the protest to an administrative authority which issued the decision, the administrative authority may itself revoke its decision against which the protest is submitted or replace such a decision with the decision corresponding to the law.
2. If the administrative authority does not fully satisfy the protest, it is obliged to submit the protest with the materials of the file in time limit specified in protest, and if the time limit is not specified, within 30 days of the decision to the superior administrative authority of the next higher level (Art. 58); if the protest concerns the central state administrative authority, it is obliged to submit the protest to its Head, who will decide on a proposal by him Established special commission (Art. 61 par. 2).
3. Decision on the protest of the prosecutor shall be delivered to the prosecutor and to the parties.
4. The decision on the protest of the prosecutor may appeal by the parties (the parties may also appeal against the decision on the protest of the central state administrative authority).

SECTION 5

THE REVIEW OF THE ADMINISTRATIVE DECISIONS BY THE COURTS

Art. 70

Special laws provide cases in which the courts review the decisions of administrative authorities.

PART FIVE

ENFORCEMENT OF THE DECISIONS

SECTION 1

GENERAL PROVISIONS

Art. 71

1. If a party fails to comply within a specified time limit a voluntary obligation imposed to him by an enforceable decision (Art. 52 par. 2), or by a settlement approved by the Administrative authority or issued and enforceable account of payment arrears (the "Decision"), the exercise shall be carried out. If the decision has not determined the time limit for fulfillment, it shall be determined by the administrative authority which carries out the execution of the decision; the time limit shall not be shorter than stipulated by the specific law.
2. The statement of payment arrears can be done, if it was compiled on the basis of an enforceable decision or on the basis of the debtor´s obligation provided by the law to pay without issuing a decision.
3. The execution of the decision may be ordered no later than three years past the time limit specified for fulfillment of the obligations imposed by the decision (par. 1).

Art. 72

1. The execution of the decision is carried out on the initiative of a party or administrative authority, which issued a decision in the first instance, approved a settlement or made a statement of payment arrears (recovering administrative authority). If the latter is not itself authorized to exercise the decision, it shall refer the matter to the competent authority in accordance with Art. 73
2. A party or recovering administrative authority or the one of whom provides the special law, may apply for judicial enforcement of the decision or submit a proposal to conduct enforcement by the bailiff.

Art. 73

The execution of the decision carries out the administrative authority which has ruled on the matter in the first instance, unless a special law provides otherwise.

Art. 74

The authority responsible for the execution of the decision shall notify the party who is concerned by the initiation of the enforcement of the decision; if necessary it shall set a time limit for the implementation (Art. 71. Par. 1), indicating in this notice.

Art. 75

1. The authority responsible for the execution of the decision may for serious reasons on a party´s proposal or on its own initiative or other initiative postpone the execution of the decision.
2. At a party´s proposal or on its own initiative the authority responsible for execution of the decision drops the execution when
   a) enforced claim folded or his recovery become obsolete,
   b) ground for the enforcement of the decision (Art. 71 par. 1) has been revoked,
   c) the court is enforcing the fulfillment of the same obligation,
   d) execution of the decision is unacceptable,
   e) on the object whose the enforcement is concerned, a right has successfully been applied to which the execution of the decision not permitted.
3. On the suspension of enforcement against which the prosecutor filed a protest, the provisions of the Law on Public Prosecution apply.

Art. 76

1. The objections can be raised against individual actions and measures related to the enforcement of the decision.
2. The objections have a suspensive effect,
   a) if directed against a permit suspension or waiver of enforcement,
   b) if directed against the initiation of enforcement for the enforcement of eviction,
   c) if they apply that the enforced implementation has already been done or that the time limit for the implementation has yet not expired,
   d) if they apply to the object, which enforcement is concerned, a right which precludes execution of the decision.
3. The authority responsible for execution of the decision decides on the objections. The decision on the objection cannot be appealed.

Art. 77

(1) The enforcement may be made only by the means indicated in the law. The means of the enforcement affecting the party to the proceeding the least and leading to the objective of the enforcement shall apply.

(2) The execution of the decision is carried out on the basis of the order of execution.

SECTION 2

ENFORCEMENT OF MONETARY OBLIGATIONS

Art. 78

1. The execution of the decision imposing financial fulfillment is carried out on wage deductions, by a garnishee order or through a sale of movable or immovable property.
2. The order to carry out deductions from wages shall issue the administrative authori-

ty to the person who pays the debtor wage, other remuneration or compensation for labor income.
3. The garnishee order carries out the administrative authority so that it orders to an entity the debtor has a claim to, to fulfill the claim up to the amount due paid to the administrative authority.
4. The execution of the decision by a garnishee order from an account in a bank or branch of a foreign bank shall be carried out through its debit entry of the debtor.
5. The provisions of the Civil Code procedural shall appropriately apply on the execution of the decision under the paragraphs 1 to 4.

SECTION 3

THE ENFORCEMENT OF THE NON-MONETARY OBLIGATIONS

Art. 79

1. The decision imposing a non-monetary benefit shall be carried out through a substitute enforcement, imposition of fines or direct enforcement of the obligations imposed.
2. Substitute enforcement consists in that the imposed work and outputs shall be made on the expenses and risks of the mandatory person; if imposed work or output can also be performed by someone other than mandatory.
3. If the substitute enforcement is not according to the nature of the mater possible or efficient. The satisfaction of a decision shall recover through a gradually imposed fines; single fine imposed cannot exceed € 1,659.
4. The direct enforcement of the obligation is carried out mainly through the eviction of the apartment, office space, real estate or a part thereof, or by deprivation of the things, documents and personal rendition.
5. The provisions of the Code of Civil Procedure shall apply appropriately by a forced eviction of the obligation. The execution of the decision imposing the deprivation of things or documents is carried out in the presence of adult person.

Art. 80

1. The employee responsible for carrying out enforcement makes individual actions by a written order issued by the authority referred to in Art. 73. Such an order is required to be demonstrated.
2. If a party proves that the enforcement of the obligation has been already fulfilled or that the enforcement does not last, or that the realization of enforcement has been suspended or terminated, or that the objections which have suspensive effect, were filed, the employee responsible for carrying out the enforcement will not do the action of enforcement.

PART SIX

TRANSITIONAL AND FINAL PROVISIONS

Art. 81

The administrative authority is obliged to ensure in proceedings privileges and immunities accorded by international agreements by which the Slovak Republic is bound, or laws.

Art. 82

1. The provisions of this Act apply to proceedings unfinished before its effectiveness.
2. Unless the decision became final before the effectiveness of this Act, a retrial may be allowed, if the decision has been reached by committing a crime. The review of the decision out of the appellate proceedings may be ordered only if since the date on which the decision becomes final, three years did not have elapsed.
3. If prior to the start of the effectiveness of this Act the administrative execution begun, it shall complete in accordance with current regulations.

Art. 83

The legal regulations hereby are revoked:

1. Government Regulation No. 91/1960 Coll. on the administrative proceedings;
2. Art. No. 28 par. 1 of the Act no. 60/1961 Coll. on the tasks of the national committees to ensure a Socialist order;
3. Art. No. 15 par. 4 the second sentence of the Act no. 60/1965 Coll. on the Prosecutor's Office.

Art. 84

The provisions of special legislation in force at the beginning of the effectiveness of this Act governing the administrative proceedings remain unaffected, but with the exception of the provisions that on an appeal against the decisions of the authorities of the National Committee, the authorities of that National Committee decide. The special competence of local national committees established at the beginning of the effectiveness of this Act stipulated by specific legislation remains unaffected.

Art. 85

This law shall enter into force on January. January 1968.

Novotný v. r.
Laštovička v. r.
Lenárt v. r.

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